TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1922

No. [redacted]65

PAUL V. LACOSTE, JOSEPH E. MARES, HENRY P. MIRANDONA, ET AL., PLAINTIFFS IN ERROR,

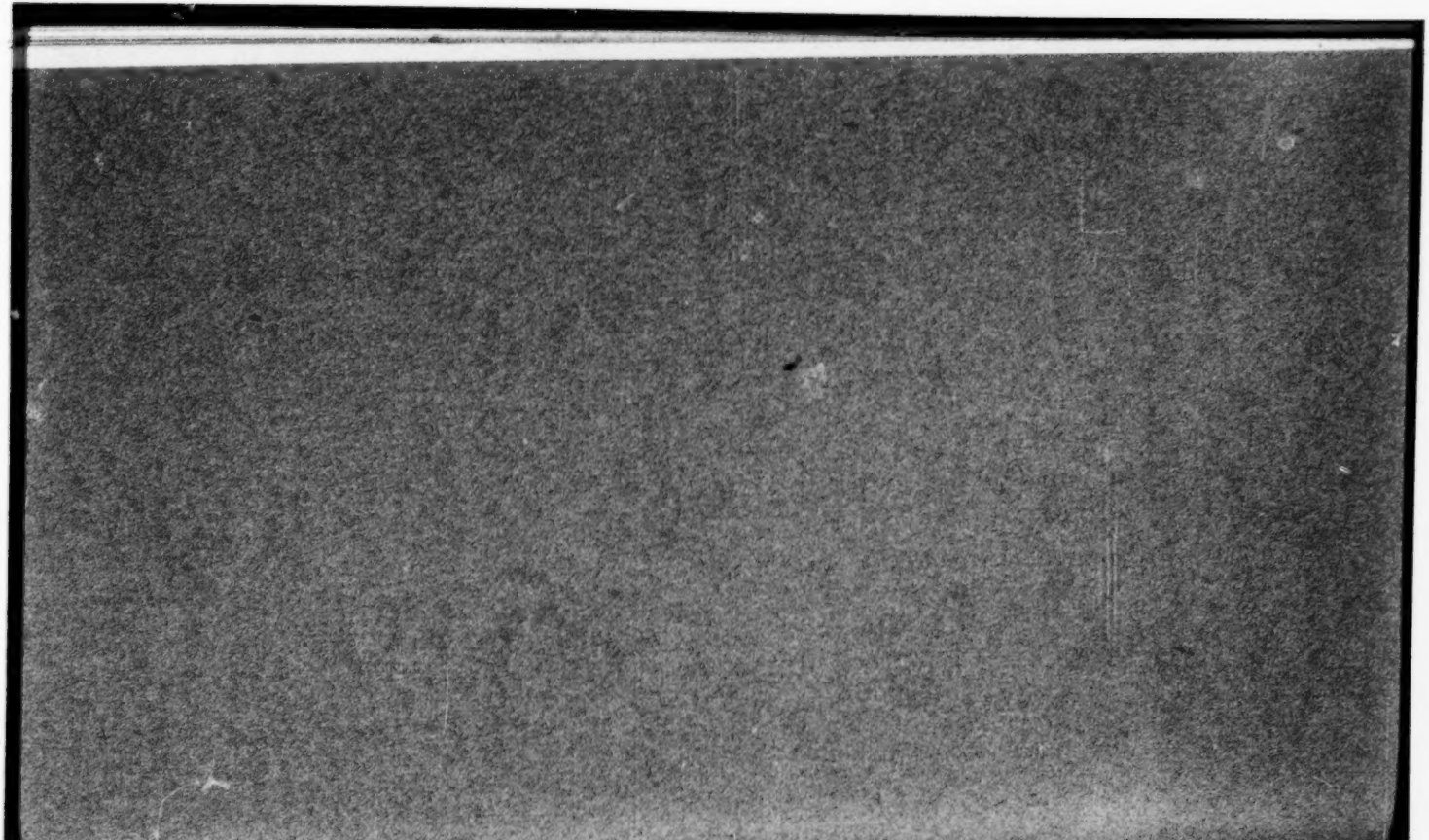
vs.

DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED JUNE 26, 1922.

(29,003)



(29,003)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 453.

PAUL V. LACOSTE, JOSEPH E. MARES, HENRY P. MIRANDONA, ET AL., PLAINTIFFS IN ERROR,

vs.

DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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a UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

No. 25061.

PAUL V. LACOSTE et als., Plaintiffs-in-error,
vs.
DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA, Defendant-in-error.

Edwin T. Merrick and Ralph J. Schwarz, composing the law firm of Merrick & Schwarz; and Morris B. Redmann, for the Plaintiffs-in-error.

Honorable A. V. Coco, Attorney General of the State of Louisiana, and Paul A. Sompayrac, Assistant to the Attorney General, for the Defendant-in-error.

Writ of Error to the Supreme Court of the State of Louisiana from the Supreme Court of the United States of America, Returnable at the City of Washington, D. C., Within Thirty (30) Days from the 15th Day of June, A. D. 1922.

Transcript of Record.

1 STATE OF LOUISIANA,
Parish of Orleans,
City of New Orleans:

Civil District Court for the Parish of Orleans.

Petition, Affidavit, Order, and Bond.

Filed September 6, 1921.

Civil District Court for the Parish of Orleans, State of Louisiana, Division "E."

No. 138,385. Docket 5.

PAUL V. LACOSTE et als.
vs.
DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA.

To the Honorable the Civil District Court for the Parish of Orleans, State of Louisiana:

The petition of Paul V. Lacoste, Joseph E. Mares, John J. Babin, and Henry P. Mirandona, all above the age of majority and resi-

dents of the City of New Orleans, State of Louisiana; of Steinberg & Co., of New Orleans, a commercial partnership composed of Morris Steinberg, Joseph V. Landry and Camille J. Richard, all above the age of majority and residents of the City of New Orleans, State of Louisiana; of William E. Voekel & Co., Inc., a Louisiana corporation; of Becker Brothers & Co., an Illinois commercial partnership, with its principal place of business in the City of Chicago, said State, and doing business in the State of Louisiana with respect shows:

I.

That your petitioners are severally engaged, in the State of Louisiana, and more particularly in the City of New Orleans,
2 in the business of buying and selling, importing and exporting and dealing in hides, skins and furs, some of which were originally taken from wild fur bearing animals and alligators in the State of Louisiana.

II.

That your petitioners have always paid the personal property tax levied on their stock in trade, which consists of the hides and furs of wild animals, and of the skins of alligators; and your petitioners have always paid the general annual license taxes imposed by the Acts of the General Assembly of the State of Louisiana.

III.

That the Department of Conservation of the State of Louisiana, purporting to act under the provisions of Act No. 135 of the General Assembly of the State of Louisiana, of the Regular Session of the Year 1920, is seeking to collect from your petitioners a "Severance Tax" of two (2) cents on the dollar on and of the value of all skins or hides taken from any wild fur bearing — or alligators within this State.

IV.

That your petitioners have declined to pay the said tax, for the reason that the Act of the Legislature, under which same is sought to be levied and collected, is unconstitutional, being in violation of both the Constitution of the State of Louisiana and of the Constitution of the United States, and more especially in the following respects:

(*a*) The said Act of the Legislature is violative of Article 31 of the State Constitution of 1913, in that the title of the said Act does not embrace nor express the object in regard to limiting the privileges of trapping fur bearing animals or alligators in this State to such persons only as shall have been bona fide residents of this State for at least the preceding six months, as set out in Section 5 of the Act; nor does the title of the said Act show that a distinction is made

between resident and non resident dealers, in regard to the amount of license tax to be paid.

3 (*b*) The said Act of the Legislature embraces more than one object.

(*c*) The said Act of the Legislature is violative of the State Constitution, in that the license tax therein provided for its not equal and uniform.

(*d*) It is violative of the Constitution of the United States, and particularly of the Fourteenth Amendment thereof, in that it denies to persons within the State's jurisdiction the equal protection of the laws,—the object of the Act being to relieve the trapper of any tax and to place the burden of the tax on the dealer, contrary to the policy of the State taxation in every other instance of "Severance Tax."

(*e*) The said Act is violative of the Constitution of the United States, and particularly of Article 4, Section 2 thereof, in that it denies to the citizens of the other States privileges and immunities granted and permitted to citizens of this State.

(*f*) It is violative of the Constitution of the State of Louisiana, in that the title of the said Act of the Legislature expresses the purpose of the Act to be levying of a "Severance Tax," whereas Section 3 of the Act, while using the words "Severance Tax," in fact does not levy the tax on the severing of or on the persons who sever the skins or hides, but purports to levy a "Severance Tax" on the dealer in such hides and skins.

V.

That your petitioners are all dealers in hides and skins, as defined in Section 1, Paragraph 4, of the said Act No. 135 of 1920.

VI.

That your petitioners are willing, ready and able to pay to the Department of Conservation, the license tax provided for in Act No. 135 of 1920, under protest and without recognizing the right of the Department of Conservation to levy or collect the said license tax, or without in any way acquiescing in the validity of the said
4 Act No. 135 of 1920, or of any of the provisions thereof; but the said Department of Conservation has refused to accept the payment of said license tax or to issue licenses to your petitioners, until the petitioners shall have first paid the "Severance Tax" provided for in Section 3 of the said Act No. 135 of the General Assembly of the Regular Session of 1920.

VII.

Now your petitioners show that because of your petitioners' refusal to pay the said "Severance Tax" sought to be collected by the De-

partment of Conservation under the provisions of the said Act No. 135 of 1920, said Department of Conservation is threatening and is about to seize and confiscate all shipments of hides and furs made or to be made by any of your petitioners, which action on the part of the Department of Conservation would be unwarranted, unauthorized, illegal, and a taking of property without due process of law, and would result in irreparable injury and damage to the business of your petitioners, leaving them without any remedy against the State of Louisiana for the damages that would be sustained by petitioners as a result of such action on the part of the Department of Conservation.

IX.

That the damages that would result to your petitioners through the threatened action of the Department of Conservation in seeking to enforce the collection of the said "Severance Tax," and in seizing and confiscating all shipments of furs, hides or skins made or to be made by your petitioners, would be far in excess of Two Thousand ($2,000.00) Dollars and would be incalculable and irreparable, and that a Writ of Injunction enjoining such action on the part of the Department of Conservation is absolutely essential for the protection of petitioners' rights in the premises.

Wherefore, the accompanying affidavit and bond being considered, petitioners pray that a Writ of Injunction issue herein, enjoining and restraining the Department of Conservation and any of its officers, agents and employees from in any way interfering with the business of your petitioners, from interfering with any shipments of hides, furs and skins made or to be made by your petitioners, from seeking to enforce collection from your petitioners of the said "Severance Tax," in any other manner than by civil suit, from taking any criminal proceedings against any of your petitioners, because of the failure of petitioners, or any one of them to comply with any of the provisions of the said Act No. 135 of 1920; and, in general, enjoining and restraining the said Department of Conservation, its officers, agents and employees from taking any action of any nature whatsoever (except the filing of a civil suit) against any of your petitioners, under the provisions of the said Act No. 135 of the General Assembly of the State of Louisiana, of the Regular Session of the year 1920; and that the said Department of Conservation, through its proper agent or officer, be duly cited to appear and answer this petition, and that after all legal delays have elapsed and due proceedings had, there be judgment in favor of your petitioners, perpetuating the said injunction; and for all costs.

And for all further general and equitable relief.

(Signed) MERRICK & SCHWARZ,
" MORRIS B. REDMANN,
Attorneys for Petitioners.

Affidavit.

STATE OF LOUISIANA,
Parish of Orleans, ss:

Before me, the undersigned authority, personally came and appeared: Paul V. Lacoste, Joseph F. Landry, John J. Babin and Joseph E. Mares, who, being first duly sworn according to law, deposes and said:

That they are the petitioners named in the foregoing petition; that all of the allegations of fact contained in the said petition are true and correct, and that a writ of injunction is necessary to protect the petitioners in the premises.

(Signed) PAUL V. LACOSTE,
Individually and as Agent for William E. Voelkel Co., Inc., and as Agent for Becker Bros. & Co.
(Signed) J. F. LANDRY.
" JNO. J. BABIN.
" JOS. E. MARES.

Sworn to and subscribed before me, at New Orleans, Louisiana, this 6th day of Sept. 1921.

(Signed) WILLIAM J. GUSTE,
Notary Public.

Order.

Let Writs of Injunction issue herein, as prayed for, and according to law, upon petitioners furnishing bond in the sum of Five Thousand Dollars conditioned as the law requires.

New Orleans, Louisiana, this 6th day of September, 1921.

(Signed) WYNNE G. ROGERS,
Judge.

Bond of Injunction.

Filed September 6th, 1921.

Civil District Court for the Parish of Orleans, Division —.

No. —.

PAUL V. LACOSTE et als.

vs.

DEPARTMENT OF CONSERVATION.

Know all men by these presents, that we, Paul V. Lacoste, Joseph E. Mares, John J. Babin, Steinberg & Company, of N. O., William E. Voekel & Co. Inc., Becker Bros. & Co. as principals and American

Surety Company of New York, of 100 Broadway, New York City, as security, of the City of New Orleans and State of Louisiana, are held and firmly bound unto Department of Conservation of the State of Louisiana, in the sum of Five Thousand Dollars, law-
7 ful money of the United States of America, to be paid to said Department of Conservation of the State of Louisiana, heirs, executors, administrators and assigns, for which payments well and truly to be made, we bind ourselves and each of us, by himself and each of our heirs, executors, administrators, firmly by these presents.

Signed and dated the 6th day of September in the year of our Lord 1921.

Whereas, the said Paul V. Lacoste, Joseph E. Mares, John J. Babin, Steinberg & Company of N. O., William E. Voelkel & Co. Inc., Becker Bros. & Co., have this day obtained an order from the Honorable the Civil District Court for the Parish of Orleans, ordering a Writ of Injunction to issue in the matter entitled Paul V. Lacoste et als. vs. Department of Conservation, No. —.

Now, the condition of the above obligation is, That we, the above bound Paul V. Lacoste, Joseph E. Mares, John J. Babin, Steinberg & Co. of N. O., and Becker Bros. & Co. and American Surety Company of New York, will well and truly pay to the said Department of Conservation of the State of Louisiana, the defendant in said suit all such damages as it may recover against us, in case it should be decided that the injunction was wrongfully obtained.

(Signed) PAUL V. LACOSTE,
Individually and as Agent for William E. Voelkel & Co., Inc., and as Agent for Becker Bros. & Co.
" JNO. J. BABIN.
" JOS. E. MARES.
" STEINBERG & CO. OF N. O.
" J. F. PUNEKY.
[SEAL.] AMERICAN SURETY COMPANY OF NEW YORK,
By CHANT HOFFMAN,
President, Resident Vice-President.

Attest:

C. MURPHY,
Resident Assistant Secretary.

8 *Writ of Injunction—Sheriff's Return Thereon.*

Filed September 12th, 1921.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division —.

No. 138,385. Docket 5.

PAUL V. LACOSTE et als.

vs.

DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA.

To Department of Conservation of the State of Louisiana and any of its officers, agents, and employees, New Orleans, La., Greeting:

You are commanded, enjoined, restrained and prohibited in the name of the State of Louisiana and of the Civil District Court for the Parish of Orleans, from in any way interfering with the business of the petitioners, from interfering with any shipment of hides, furs and skins made or to be made by petitioners, from seeking to enforce collection from petitioners of the said "Severance Tax", in any other manner than by civil suit, from taking any criminal proceedings against any of your petitioners because of the failure of petitioners, or any one of them, to comply with any of the provisions of the said Act No. 135 of 1920; and you are to so remain enjoined, restrained and prohibited until the further orders of this Honorable Court.

And what you do in the premises you make return thereof, together with this writ to our said Court, as the law directs.

Witness, the Honorables Fred D. King, E. K. Skinner, Porter Parker, Hugh C. Cage and Wynne G. Rogers, Judges of the said Court, this 6th day of September in the year of our Lord one thousand nine hundred and 21 and in the one hundred and 45th year of the Independence of the United States.

(Signed) THOS. O'MEALLI.
Dy. Clerk.

9 Received Tuesday September 6th, 1921. On the 6th day of Sept. 12:45 o'clock P. M., served a copy of the within Injunction on Department of Conservation of the State of Louisiana, defendant herein by leaving the same at their office New Court House Bldg., 2nd floor, Conti & Royal St. in the hands of John E. Renaud, Secretary thereon apparently over the age of 18 years, whose name and other facts connected with this service I learned by interrogating the said John K. Renaud, Secretary, the said President &

other Superior Officers being absent from its office at time of said service.

Returned same day.

(Signed) JOS. LEGETT,
Dy. Sheriff of Orleans.

Sheriff's fees $2.00.

Citation, with Sheriff's Return Thereon.

Filed September 12th, 1921.

Civil District Court for the Parish of Orleans, Division —.

No. 138,385. Docket 5.

PAUL V. LACOSTE et als.

VS.

DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA.

To Department of Conservation of the State of Louisiana through its proper agent or officer, New Orleans, La.:

You are hereby summoned to comply with the demand contained in the petition of which copy accompanies this citation, or deliver your answer to same, in the office of the Clerk of the Civil District Court, Parish of Orleans, within ten days after the service thereof.

Witness the Honorables Fred D. King, E. K. Skinner, Porter Parker, Hugh C. Cage, Wynne G. Rogers, Judges of the said Court, this 6th day of September in the year of our Lord, 1921.

(Signed) THOS. O'MEALLIE,
Deputy Clerk.

[SEAL.]

Court-House, Conti and Royal Sts.

10 *Sheriff's Return.*

Received Tuesday Sept. 6th, 1921, and on the 6th day of September, 1921, served a copy of the within citation, accompanying petition on the Department of Conservation of the State of Louisiana, defendant herein by leaving the same at their office New Court House Bldg., Conti & Royal Streets, 2nd floor in the hands of John K. Renaud, Secretary, a person apparently over the age of 18 years whose name and other facts connected with this service I learned by interrogating the said John K. Renaud, Secretary, the said President & Other Superior Officers being absent from its officers at time of said service.

Returned same day.

(Signed) JOS. LEGETT,
Deputy Sheriff.

Sheriff's fees $1.50.

Supplemental Petition, Affidavit, and Bond.

Filed September 9th, 1921.

Civil District Court for the Parish of Orleans, State of Louisiana, Div. "E."

No. 138,385. Docket 5.

PAUL V. LACOSTE et als.

vs.

DEPARTMENT OF CONSERVATION, STATE OF LOUISIANA.

To the Honorable the Civil District Court for the Parish of Orleans, State of Louisiana:

The supplemental petition of Paul V. Lacoste, Joseph E. Mares, John J. Babin, Steinberg & Company, William E. Voelkel & Co. Inc., and of Becker Brothers & Co., respectfully shows:

I.

That the American Railway Express Company, a corporation organized under the laws of the State of Delaware, engaged in interstate commerce as a common carrier, and doing business in the
11 City of New Orleans, has refused, and still refuses, to accept for transportation, shipment of hides, skins and furs from your petitioners, for the reason that said shipments are not made in accordance with regulations provided for by the Department of Conservation of the State of Louisiana, purporting to act under Act 135 of the General Assembly of the State of Louisiana, Regular Session of 1920.

II.

That among other regulations so made by the Department of Conservation of the State of Louisiana, is one requiring all shipments of hides and furs to be tagged with a certain form of card issued by the said Department of Conservation of the State of Louisiana.

III.

That the said Department of Conservation of the State of Louisiana has refused to issue to any of your petitioners the said cards or tags, until your petitioners shall have first paid the severance tax provided for in the said Act 135 of 1920.

IV.

That the said American Railway Express Company refused to accept shipment of hides, furs and skins, unless such shipments are tagged with said cards issued by the Department of Conservation of the State of Louisiana, and that the Department of Conservation of the State of Louisiana has refused to issue such tags to your petitioners.

V.

Your petitioners allege that the action of the said American Railway Express Co. in refusing to accept from your petitioners, shipments of hides, furs and skins, is unwarranted, unauthorized and illegal, and in violation of its duties as a common carrier, and will result in irreparable injury and damage to your petitioners, far in excess of the sum of Two Thousand ($2,000.00) Dollars, and incapable of accurate calculation, and that a writ of injunction,
12 enjoining the said American Railway Express Co. from so violating its duties as common carrier, by refusing to accept shipments of hides and furs tendered by your petitioners, is absolutely essential for the protection of petitioners' rights in the premises.

Wherefore, the accompanying affidavit and bond heretofore furnished herein being considered, petitioners pray that a Writ of Injunction issue herein, enjoining and restraining the American Railway Express Company, its officers and employees from violating its duty and obligation as common carrier, to accept and transport shipments for the public in general, more particularly, for your petitioners, and from refusing to accept for shipment and to transport to destinations designated by your petitioners shipments of hides, furs and skins tendered by your petitioners, and that the said American Railway Express Company, through its proper agent or officers be duly cited to appear and answer this supplemental petition, and that after all legal delays have elapsed and due proceedings had, there be judgment in favor of your petitioners, perpetuating the said injunction, and for all costs.

And for all further general and equitable relief.

(Signed) MERRICK & SCHWARZ,
" MORRIS B. REDMANN,
Attorneys for Petitioners.

Affidavit.

STATE OF LOUISIANA,
Parish of Orleans, ss:

Before me, the undersigned authority, personally came and appeared Morris B. Redmann, who, being first duly sworn, deposed and said:

That he is one of the attorneys for petitioners in the foregoing supplemental petition; that all the allegations of fact contained in said petition are true and correct, to the best of his information, knowledge and belief.

13 (Signed) MORRIS B. REDMANN.

Sworn to and subscribed before me, this 9th day of September, 1921.

(Signed) HERMAN E. BARNETT,
N. P.

Order.

Let writs of Injunction issue herein, as prayed for and according to law, upon furnishing bond in the sum of Five Hundred Dollars. September 9th, 1921.

(Signed) WYNNE G. ROGERS,
Judge.

Bond of Injunction.

Filed September 9th, 1921.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division "E."

No. 138,385.

PAUL LACOSTE et als.

vs.

DEPARTMENT OF CONSERVATION.

Bond of Injunction.

Know all men by these presents, That we, Paul Lacoste, Joseph E. Mares, John J. Babin, Steinberg & Co., William E. Voelkel & Co. Inc., and Becker Bros. & Co., as principals, and Morris B. Redmann, as security, of the City of New Orleans, and State of Louisiana, are held and firmly bound unto American Railway Express Co. in the sum of Five Hundred and no/100 Dollars, lawful money of the United States of America, to be paid to said American Railway Express Co., heirs, executors, administrators and assigns, for which payments well and truly to be made, we bind ourselves and each of us, by himself and each of our heirs, executors, administrators, firmly by these presents.

14 Signed and dated the 9th day of September in the year of our Lord 1921.

Whereas, the said Paul V. Lacoste, Joseph E. Mares, John J. Babin, Steinberg & Co., William E. Voelkel & Co. Inc., and Becker

Bros. Co. have this day obtained an order from the Honorable the Civil District Court for the Parish of Orleans, ordering a Writ of Injunction to issue in the matter entitled Paul V. Lacoste et als. vs. Department of Conservation, No. 138,385.

Now, the condition of the above obligation is, That we, the above bound Paul V. Lacoste, Jos. E. Mares, John J. Babin, Steinberg & Co., William E. Voelkel & Co. Inc., and Becker Bros. & Co., and Morris B. Redmann will well and truly pay to the said American Railway Express Co., the defendant in said injunction all such damages as it may recover against us, in case it should be decided that the injunction was wrongfully obtained.

(Signed) PAUL V. LACOSTE,
JOSEPH E. MARES,
JOHN J. BABIN,
STEINBERG & CO.,
WILLIAM E. VOELKEL & CO., INC.,
BECKER BROS. & CO.,
By MORRIS B. REDMANN,
Their Agent & Atty.
MORRIS B. REDMANN.

Affidavit of Surety.

Morris B. Redmann being duly sworn, says that he is worth over and above all his debts and obligations Five Hundred Dollars in assets that can be subjected to levy under execution, and that he resides in the Parish of Orleans.

(Signed) MORRIS B. REDMANN.

Sworn to and subscribed before me this 9th day of September 1921 A. D.

(Signed) E. JORDAN.

Affidavit of Principal.

Morris B. Redmann being duly sworn says that he is one of the attorneys for the principals herein Morris B. Redmann the surety on this bond, is worth over and above his debts and obligations in assets that can be subjected to levy under execution, the amount for which he has bound himself in this bond.

(Signed) MORRIS B. REDMANN.

Sworn to and subscribed before me this 9th day of September 1921, A. D.

(Signed) E. JORDAN,
Dy. Clerk.

Writ of Injunction.

Filed September 15th, 1921.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division "E."

No. 138,385. Docket 5.

PAUL V. LACOSTE et als.

vs.

DEPARTMENT OF CONSERVATION, STATE OF LOUISIANA.

To American Railway Express Co., its officers and employees, New Orleans, La., Greeting:

You are commanded enjoined, restrained and prohibited in the name of the State of Louisiana and of the Civil District Court for the Parish of Orleans, from violating its duty and obligation as common carrier, to accept and transport shipments for the public in general, and more particularly, for the petitioners, and from refusing to accept for shipment and to transport to destinations designated by petitioners, shipments of hides, furs and skins tendered by petitioners, and you are to remain so enjoined, restrained and prohibited until the further orders of this Honorable Court.

And what you do in the premises you make return thereof, together with this writ to our said Court, as the law directs.

Witness the Honorables Fred D. King, E. K. Skinner, Porter Parker, Hugh C. Cage and Wynne G. Rogers, Judges of the said Court, this 9th day of September, in the year of our Lord, one
16 thousand nine hundred and twenty one and in the one hundred and 45th year of the Independence of the United States.

(Signed) THOS. O'MEALLIE,
Deputy Clerk.

Sheriff's Return Thereon.

Received Friday, September 9th, 1921, on the 9th day of September, 1921, served a copy of the within Injunction on American Express Company, defendant herein by personal service on J. C. Leggett, Acting Agent. Returned same day.

(Signed) LOUIS PILLOT,
Deputy Sheriff of Orleans Parish.

Sheriff's Fees $2.00.

Citation, with Sheriff's Return Thereon, to Supplemental Petition.

Filed September 15th, 1921.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division "E."

No. 138,385. Docket 5.

PAUL V. LACOSTE et als.

vs.

DEPARTMENT OF CONSERVATION, STATE OF LOUISIANA.

To American Railway Express Company, through its proper officers, New Orleans, La.:

You are hereby summoned to comply with the demand contained in the supplemental petition of which copy accompanies this citation, or deliver your answer to the same in the office of the Clerk of the Civil District Court for the Parish of Orleans, within ten days after the service thereof. '

Witness the Honorable Fred D. King, E. K. Skinner, Porter Parker, Hugh C. Cage and Wynne G. Rogers, Judges of the said Court, this 9th day of September, in the year of our Lord 1921.

(Signed) THOS. O'MEALLIE, [SEAL.]
Dy. Clerk.

Court-house, Conti and Royal Sts.

17 Received Friday September 9th, 1921, on the 9th day of September 1921, served a copy of the within Citation, accompanying petition on American Railway Express Company defendant herein by leaving the same at its office 550 Baronne Street in the hands of J. C. Legg, Acting Agent a person apparently over the age of 18 years whose name and other facts connected with this service I learned by interrogating the said J. C. Legg, Acting Agent, the said President & Other Superior Officers being absent from its office at time of said service.

(Signed) LOUIS PILLOT,
Deputy Sheriff, Orleans Parish.

Sheriff's Fees $1.50.

Exception.

Filed October 17th, 1921.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division "E."

No. 138,385, Docket 5.

PAUL V. LACOSTE et als.

vs.

DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA.

Now comes the Department of Conservation of the State of Louisiana, through A. V. Coco, Attorney General, L. E. Hall, Assistant Attorney General, and Paul A. Sompayrac, Assistant to the Attorney General, who, without answering in the above numbered and entitled cause, and especially reserving the right of the Conservation Department to further plead and answer in the event that this exception is not sustained, avers as follows:

I.

That the petition of the plaintiffs discloses no cause nor right of action, and therefore the injunction should be dissolved and the suit dismissed.

Wherefore, defendant prays that the above exception be
18 sustained and the suit of the plaintiffs dismissed at their cost, and for full and general relief.

A. V. COCO,
Attorney General.
L. E. HALL,
Assistant Attorney General.
(Signed) PAUL A. SOMPAYRAC,
Assistant to Attorney General.

New Orleans, October 17th, 1921.

I, of Counsel in the above numbered and entitled cause, certify that the foregoing exception is filed in good faith and for the purposes therein stated.

(Signed) PAUL A. SOMPAYRAC,
Asst. to Atty. Genl.

Exception to Jurisdiction and Certificate.

Filed October 24th, 1921.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division "E."

No. 138,385, Docket 5.

PAUL V. LACOSTE et als.

VS.

DEPARTMENT OF CONSERVATION.

Now comes the defendant in the above numbered and entitled cause who, with full reservation to all objections and exceptions previously filed herein, excepts further as follows:

I.

That this Honorable Court is without jurisdiction in the above matter.

II.

That this Honorable Court had not jurisdiction nor judicial power to issue the injunction in the above numbered and entitled cause as the provisions of law govern same and particularly Section 56 of Act 170 of 1898 had not been complied with.

19 III.

Defendant avers that no rule nisi was issued nor sustained in the above matter previous to the issuance of said injunction.

With full reservation of all rights to further plead, defendant prays that all exceptions filed herein be sustained and this cause dismissed and the injunction dissolved.

A. V. COCO,
Attorney General.

(Sg.) L. E. HALL,
Asst. Atty. General.

(Sg.) PAUL A. SOMPAYRAC,
Asst. to Atty. Genl.

I, Paul A. Sompayrac, Assistant to the Attorney General, do hereby certify that the foregoing exception is filed in good faith and not for the purpose of delay.

(Signed) PAUL A. SOMPAYRAC,
Asst. to Atty. Genl.

New Orleans, Louisiana,
October 24th, 1921.

Motion Fixing Exceptions and Sheriff's Return Thereon.

Filed October 24th, 1921.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

Civil District Court, Division "E."

No. 138,385.

PAUL V. LACOSTE et al.

vs.

DEPT. OF CONSERVATION OF LOUISIANA.

On motion of Paul A. Sompayrac, Asst. to the Atty. General of La., Attorney for Defdt. under Sec. 56 of act 170 of 1898, it is ordered that the Exception filed by Deft. in this case be fixed for trial on Friday, the 21st day of October, 1921.

A True Copy,
(Signed) W. ANDREE, [SEAL.]
Dy. Clerk.

20 *Sheriff's Return.*

Received Wednesday, October 19th, 1921, on the 20th day of October, 1921 served a copy of the within notice of trial on E. T. Merrick, Attorney mentioned herein in person.

Returned same day,
(Signed) JOHN E. VILLA,
Dy. Sheriff of Orleans Parish.

Sheriff's Fee 50¢.

Minutes of Court.

Extract from Minutes "E."

Present Honorable Wynne G. Rogers, Judge.

Rule & Exception Submitted.

Friday, October 28th, 1921.

On Rule for Contempt and Exceptions Filed by Defendant.

After hearing pleadings and evidence and argument of counsel on rule for contempt herein filed by plaintiff, the said rule was submitted and taken under advisement, and, on the exceptions filed by the defendant after hearing argument the said exceptions were taken under advisement.

Exceptions Maintained and Suit Dismissed.

Thursday, Nov. 17, 1921.

For the written reasons assigned by the Court, the Court considering the exceptions herein filed by defendant well founded to the extent hereinafter set forth,

It is ordered that the exception of want of jurisdiction or judicial power to issue the injunction and that no rule nisi was issued or sustained previous to the issuance of the injunction be overruled.

It is further ordered that the exception of no right or cause of action be maintained and plaintiff's suit dismissed, and the injunction herein issued be and the same is hereby dissolved at plaintiffs' cost.

Rule for Contempt Absolute.

Thursday, November 17th, 1921.

For the written reasons assigned by the Court, the law and the evidence being in favor of mover,

It is ordered that the rule for contempt herein taken by
21 one of the plaintiffs herein, Steinberg and Company, against W. S. Holmes be made absolute and, accordingly,

It is ordered that the said Col. William S. Holmes be adjudged guilty of contempt of this Court in violating its injunction issued herein and imposing as a penalty therefor the costs of these contempt proceedings upon the said defendant in rule, to be paid within five days from this date, or in default of said payment within said period that the said respondent be imprisoned for twenty-four hours in the Parish Prison of this City.

Judgment Signed.

Wednesday, November 23rd, 1921.

The judgment in the following case read and rendered in open Court on November 17th, 1921, was signed in Open Court on this day.

Reasons for Judgment on Exceptions.

Filed November 17th, 1921.

Civil District Court, Division "E."

No. 138,385.

PAUL V. LACOSTE et als.

vs.

DEPARTMENT OF CONSERVATION, STATE OF LOUISIANA.

Alleging Act No. 135 of the General Assembly of 1920, to be violative of both the Federal and State Constitutions, plaintiffs, who are fur dealers in the City of New Orleans, seek to perpetuate the preliminary injunction issued herein enjoining the State Department of Conservation from enforcing the provisions of the Statute.

Defendant has excepted to plaintiffs' action on various grounds;—that this Court has no jurisdiction nor judicial power to issue the injunction; that no rule nisi was issued or sustained previous to the issuance of the injunction; and, further, that the petition discloses no right or cause of action.

22 The exceptions that the Court was without judicial power to issue the injunction, and that no rule nisi was issued or sustained previous to the issuance of the injunction while pleaded separately should be considered together.

Defendant contends that the Court was without judicial power to issue the injunction in doing so it violated the provisions of the Constitution of 1921, Article 10, Section 18, and Section 56 of Act No. 170 of 1898, providing for the issuance of a rule nisi in tax matters.

The answer to the first of these contentions is to be found in a mere reading of the Article of the Constitution itself, which is not self-operative and which is merely a mandate to the Legislature to provide against the issuance of process to restrain the collection of taxes, with a complete and adequate remedy for the prompt recovery by the taxpayer of any illegal tax paid by him.

Until the Legislature obeys this mandate and enacts the legislation required thereby, this Constitutional provision is without effect. While it stipulates in favor of the fisc, it likewise stipulates in favor of the taxpayer, and until both stipulations are made effective by legislative action the mandate is inoperative and without force.

The answer to the second of these contentions is that Act No. 170 of 1898 is the General Revenue Law, providing for an annual revenue for State, and the provisions of Section 56 of Act that apply solely and only to the rights and persons affected by that statute and cannot be extended by implication to embrace the rights and persons affected by Act No. 135 of 1920 which is a statute enacted for a specific purpose and to apply to particular property and persons.

The exception of want of jurisdiction is predicated upon the theory that the injunction is sought against the enforcement of a criminal or penal law.

This contention is likewise without force. The petition shows that property rights are involved. The averments are that the
23 defendant is about to seize and confiscate the property of plaintiffs, which "would be unwarranted, unauthorized, illegal, and a taking of property without due process of law," and would result in irreparable injury to the business of your petitioners," etc.

The law on this point has been stated by our Supreme Court in the following words:

"Where property rights will be destroyed or greatly impaired, interference by criminal proceedings under a void law or ordinance may be reached and controlled by a court of equity."

N. O. Baseball & Amusement Co. vs. City of New Orleans, 118 La., p. 227.

The disposition of the issues raised by these exceptions adversely to the contentions of defendant brings forward, in natural sequence, the consideration of the exception that plaintiffs' petition fails to disclose a legal or valid right or cause of action.

Pretermitting the discussion of defendant's argument that the exception should prevail because plaintiffs have failed to set forth any special article in either of the Federal Constitution or of the State Constitution*al* which the statute in question is alleged to violate, contenting themselves merely with general allegations of unconstitutionality, which would seem to state the correct principle of pleading; and taking up for consideration plaintiffs' contentions as advanced in oral argument and in brief by their counsel as if same had been specially pleaded, it appears that the grounds of the basis of relief sought by them is as follows:

I.

That the title of the Act does not give any intimation of certain provisions contained in the body of the act; namely, Section 5, providing that only persons who have been bona fide residents of the State for six months shall be permitted to trap, etc.; the stipulation in the Act that a violation of its provisions shall be a misdemeanor punishable by a fine etc., and that the provisions in the Act that a resident can obtain a dealer's license upon payment of $25.00,
24 while a non-resident dealer is required to pay $50.00 for the license.

This attack on the statute is without merit. The title of the act declares it to be among its purposes to "define trappers, fur dealers, fur buyers," etc., and it also permits licensed trappers to hunt wild game without an additional license. This, in my opinion, is a complete answer to plaintiffs' first contention.

The title of the act also stipulates that it will provide penalties for the violation of its provisions; and in the body of the act is the declaration that its violation will constitute a misdemeanor with a penalty provided for such violation. This disposes of plaintiffs' second contention.

The title of the act provided for, "the levying of an annual license tax on persons, firms, corporations or associations of persons engaged in the buying of hides or skins taken from wild fur bearing animals," etc., and it also provides that the act will define "trappers, fur dealers and fur buyers, *resident* and *non-resident*. (My italics.)

Thus, the title of the act itself is a sufficient reply to plaintiffs' third contention. The title is a sufficient compliance with the law as it fairly goes into the subject of the act so as to place all persons interested therein upon reasonable notice to make inquiry into the act itself. The title of the act need not be an index to the provisions thereof.

"If the title of an act fairly goes into the subject of the act so as to reasonably lead to an inquiry into the object thereof it is all that is necessary. The title need not be an index to the contents of the act." In re Gillette, 70th Fla. 442.

II.

Another defect in Act No. 135 of 1920, urged by plaintiffs is that the taxation imposed by its provisions is not equal and uniform as required by Article 225 of the State Constitution of 1913 for the reason that it permits residents to engage in the business of buying, and selling and dealing in furs and hides taken from wild animals and alligators upon the payment of an annual license of $25.00 while, for a similar privilege it subjects non-residents to an annual license of $50.00.

I am unable to subscribe to this view of the law. The wild life of the State is the property of the State. It is part of the State's natural resources, which, in the exercise of its police power, the State may enact laws to preserve and conserve. Patsone vs. Pennsylvania, 232 U. S. 138; McCurdy vs. Virginia, 94th U. S., 391; Greer vs. Connecticut, 161 U. S. 525, In re Gillette, 70th Fla. 442.

The argument that the license must be imposed upon the trapper and not upon the shipper begs the question. In my view, there is, in law, no distinction. The object of the statute is to keep the natural resources within the State for the benefit of its citizens. The Legislature was well within its power in imposing the license tax either at the time of the severance or at the time the attempt is made to remove the property from the State. Adams vs. Nothacker, 228 U. S. 228; Sils vs. Hesterberg, 211 U. S. 31. This principle was also enunciated by the Supreme Court of the United States in the case of

McLean vs. Denver Railroad, 203 U. S. p. 78 et seq. holding that a tax or tag was the proper regulation before transportation companies were authorized to receive hides for shipment and that an assessment law which assessed a tax was not objectionable although it was also a revenue law.

Plaintiffs also urge that the act 135 of 1920 violates the Fourteenth Amendment of the Federal Constitution, prohibiting the denial of the equal protection of the laws to any person within its jurisdiction, and that the act likewise violates Article 4, Section 2, Clause 1 of the United States Constitution by denying to the citizens of other States the privileges and immunities granted and permitted to citizens of this State.

This argument is not sound as will appear from the reasons
26 herein set forth under discussion II. Besides, non-residents are not within the jurisdiction of this State. They are outside and beyond its powers and its laws. The cases cited on behalf of plaintiffs to support this contention refer to corporations that go into a State other than that of their creation, and there comply with its laws, pay taxes, acquire property and carry on business in that State as does its own citizens.

IV.

Another contention of plaintiffs is that the Act No. 135 of 1920 is violative of Article 31 of the State Constitution of 1913, providing that every legislative act shall embrace but one object and that object shall be expressed in its title.

The argument is made that the Act in question embraces at least three separate and distinct objects. I am unable to agree with this argument. The primary object of the Act is the conservation of wild animals and wild life, which undeniably belongs to the State. The details, restrictions, duties and obligations set forth in the act constitute only separate and distinct parts of the whole scheme by this purpose if to be accomplished. The title of the act is sufficient as heretofore shown herein.

V.

Plaintiffs aver further that the language used in the title of the act is misleading in referring to the levying of a severance tax. The title does refer to a severance tax. This reference is ample and sufficient to put on notice those interested that the act levies a severance tax, and an examination of the text of the statute will reveal the nature and extent of the tax.

VI.

Plaintiffs likewise say that there is no authority in law for the levying of a tax of this kind, and quote paragraph 2 of Art. 229 of the State Constitution of 1913 as sustaining this contention. The language of the section answers the argument. It specially
27 authorizes the imposition of a tax upon the "Severing of natural resources, such as timber and minerals from the soil and

water." The reference to timber and minerals is illustrative and not restrictive. The grant of authority is to impose taxes on all natural resources from soil or water. The provision that the tax may either be graduated or fixed according to the quantity or value of the product at the place where it is severed is directory and not mandatory.

VII.

The further contention is made by plaintiffs that the two per cent levied by the act is a tax on interstate commerce. While the tax may affect interstate commerce, such is not its primary purpose. The object of the law, as previously stated herein, is to conserve the wild animals and wild life of the State. If, in effecting this purpose, interstate commerce is incidently affected it does not bring the provisions of the Statute within the prohibition of the Commerce Clause of the United States. McLean vs. Denver Railroad, 203 U. S. p. 78 et seq. Besides, under Section 242, of the 35 Statutes at Large, page 1137 of the United States, generally known as the "Lacey Act," Congress has effectively granted to the several States the right to enact such laws as they may deem necessary or proper for the protection and conservation of wild animals and wild life within their territorial limits.

In accordance with the views herein expressed, the exceptions of want of jurisdiction or judicial power to issue the injunction and that no rule nisi was issued or sustained previous to the issuance of the injunction will be overruled and the exception that the petition discloses no right or cause of action will be sustained and plaintiffs' suit be dismissed, and the injunction herein issued be dissolved, at plaintiffs' costs.

It will be so ordered.

(Signed) WYNNE G. ROGERS,
Judge.

New Orleans, November 17th, 1921.

28 *Judgment.*

Civil District Court, Division "E."

No. 138,385.

PAUL V. LACOSTE et als.

vs.

DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA.

On Exceptions.

For the written reasons assigned by the Court, the Court considering the exceptions herein filed by defendant well founded to the extent hereinafter set forth,

It is ordered that the exception of want of jurisdiction or judicial power to issue the injunction and that no rule nisi was issued or sustained previous to the issuance of the injunction, be overruled.

It is further ordered that the exception of no right or cause of action be sustained and plaintiffs' suit dismissed, and the injunction herein issued be and the same is hereby dissolved, at plaintiffs' cost.

Judgment read and rendered in open Court November 17th, 1921.

Judgment signed in open Court November 23rd, 1921.

(Signed) WYNNE G. ROGERS,
Judge.

Motion and Order of Appeal.

Filed November 23rd, 1921.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

Civil District Court, Division "E."

No. 138,385.

P. V. LACOSTE et als.

vs.

DEPARTMENT OF CONSERVATION.

On motion of P. V. Lacoste, Joseph E. Mares, John J. Babin, W. P. Mirandona, Steinberg & Company, a commercial partnership composed of M. Steinberg, Joseph Landry and Camile J. Richard, and of said partners, William E. Voelkel & Company, Inc., Becker Brothers & Company and Illinois Commercial partnership, all plaintiffs in the above numbered and entitled cause, through their attorneys, Merrick & Schwarz and Morris B. Redmann, and on suggesting to the Court,

29

That plaintiffs are aggrieved by the judgment herein rendered on the 17th day of November 1921, and signed on the 23rd day of November, 1921, in favor of the defendant; that such judgment is contrary to the law and the evidence and that movers desire to appeal suspensively and devolutively therefrom to the Supreme Court of the State of Louisiana,

It is ordered that a suspensive and devolutive appeal be granted to the said P. V. Lacoste, Joseph E. Mares, John J. Babin, H. P. Mirandona, Steinberg & Company, a commercial partnership composed of E. Steinberg, Joseph Landry and Camile J. Richard and to said partners, William E. Voelkel & Company, Inc., Becker Brothers & Company, an Illinois Commercial partnership, returnable to the Supreme Court of the State of Louisiana on the 3rd

day of January 1921, upon said movers furnishing bond with good and solvent security in the sum of $250.00, Two hundred and fifty dollars.

New Orleans, Louisiana, November 23rd, 1921.

(Signed) WYNNE G. ROGERS,
Judge.

Bond of Injunction.

Filed November 29th, 1921.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division "E."

No. 138,385. Docket 5.

PAUL V. LACOSTE et als.

vs.

DEPARTMENT OF CONSERVATION OF LA.

Know all men by these presents, that we, Paul V. Lacoste, Jos. E. Mares, John J. Babin, Henry Mirandona, Steinberg & Co., Wm. E. Voelkel & Co. Inc., Becker Bros. & Co., as principals, American Surety Co. of N. Y., as surety, are held and firmly bound unto John J. O'Neill, Clerk of the Civil District Court for the Parish of Orleans, his successors, executors, administrators and assigns, in the sum of Two hundred and fifty ($250.00) Dollars for the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents, dated in the City of New Orleans, on this 26th day of November in the year of our Lord one thousand, nine hundred and twenty-one.

Whereas, the above bounden Paul V. Lacoste, Jos. E. Mares, John J. Babin, Henry Mirandonna, Steinberg & Co., Wm. E. Voelkel & Co., Becker Bros. & Co. have this day filed a motion of appeal from a final judgment rendered against them in the suit of Paul V. Lacoste et als. vs. Department of Conservation of Louisiana, No. 138,385 of the Civil District Court for the Parish of Orleans, on the 17th day of November 1921 and signed on the 23rd day of November 1921.

Now the condition of the above obligation is such, That the above bound Paul V. Lacoste, Jose E. Mares, John J. Babin, Henry Mirandonna, Steinberg & Co., Wm. E. Voelkel & Co. Inc., Becker Bros. Co. shall prosecute their appeal, and shall satisfy whatever judgment may be rendered against them or that the same shall be satisfied by the proceeds of their estates, real or personal, if they

be cast in the appeal; otherwise that the said American Surety Co. of New York shall be liable in their place.

(Signed) JOS. E. MARES.
PAUL V. LACOSTE.
STEINBERG & CO.
BECKER BROS. & CO.,
Per SIDNEY FRANK.
HY. MIRRANDONA & CO.
WM. E. VOELKEL SON CO., INC.,
H. A. MAYER,
Sec.
JNO. J. BABIN.
AMERICAN SURETY COMPANY OF N. Y.,
By CHAS. KAUFMAN, [SEAL.]
Resident Vice-President.

Signed, sealed and delivered in the presence of
MORRIS B. REDMANN.
A. MENGES.

Attest:
C. MURPHY,
Resident Assistant Secretary.

31 *Instructions as to Transcript of Appeal.*

Filed December 12th, 1921.

Civil District Court for the Parish of Orleans, State of La.

Civil District Court, Division "E."

No. 138,385.

PAUL V. LACOSTE et als.

vs.

DEPARTMENT OF CONSERVATION.

Clerk of Civil District Court,
Parish of Orleans,
New Orleans, Louisiana.

DEAR SIR:

You will please incorporate in the transcript of appeal to the Supreme Court in the above entitled and numbered cause the following only:

1. Petition, affidavit, order and bond.

2. Writ of Injunction and citation and returns thereon.
3. Supplemental petition, affidavit, order and bond.
4. Supplemental writs of injunction, citation and returns thereon.
5. Exception of no cause of action and certificate.
6. Exception to jurisdiction and certificate.
7. Motion fixing exceptions and return thereon.
8. All extracts from the minutes of the Court.
9. Reasons for judgment on exceptions.
10. Judgment on Exceptions.
11. Motion and order of appeal and appeal bond.

Yours very truly,
(Signed) MERRICK & SCHWARZ,
MORRIS B. REDMANN,
Counsel for P. V. Lacoste et als., Appellants.

Approved:

PAUL A. SOMPAYRAC,
Subject to E. & O. E.,
Counsel for Department of Conservation, Appellee.

32 (*Certificate of Deputy Clerk of Civil District Court.*)

STATE OF LOUISIANA:

Civil District Court for the Parish or Orleans.

I, William W. Cummings, Dy. Clerk of the Civil District Court for the Parish of Orleans, do hereby certify that the foregoing Twenty-eight (28) pages do contain a true, correct and complete transcript of all the proceedings had, documents filed and evidence adduced upon the trial of the case entitled Paul V. Lacoste et als. vs. Department of Conservation of the State of Louisiana, instituted in this Court and now in the records thereof under the No. 138,385 of the docket, Division "E", Honorable Wynne G. Rogers, Judge made up in accordance with instructions filed December 12th, 1921 and copied on page 28 of this transcript.

In testimony whereof, I have hereunto set my hand and affixed the impress of the seal of said Court, at the City of New Orleans, on this 29th day of December in the year of Our Lord, One thousand, nine hundred and twenty-one, and in the one hundred and 46th year of the Independence of the United States of America.

[SEAL.] (Signed) W. W. CUMMINGS,
Dy. Clerk.

33 PROCEEDINGS HAD IN THE SUPREME COURT OF THE STATE OF LOUISIANA.

(Transcript of Appeal Filed.)

Supreme Court of Louisiana.

No. 25061.

PAUL V. LACOSTE et als.

vs.

DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA.

Filed January 2d, 1922.

(Signed) PERCY J. HEINES,
Dy. Clerk.

(Motion for Special Preference.)

Supreme Court of Louisiana.

No. 138,385.

PAUL V. LACOSTE et als.

vs.

DEPARTMENT OF CONSERVATION.

Now comes the State of Louisiana, represented herein by A. V. Coco, Attorney General, and Paul A. Sompayrac, Assistant to the Attorney General, who respectfully show that they file herein brief on behalf of the Department of Conservation of the State of Louisiana, in the above numbered and entitled cause. They further certify that copies of the brief and this motion have been mailed to Messrs. Merrick & Schwarz and Mr. Morris B. Redmann, attorneys for plaintiffs and appellants.

Your movers respectfully represent that an injunction was issued prohibiting the Department of Conservation of the State of Louisiana from proceeding to enforce payment of the conservation tax due by the plaintiff under the provisions of Act 135 of 1920. That said injunction was dissolved, but plaintiff suspensively appealed therefrom and the injunction has the effect of prohibiting the Department of Conservation from collecting the said tax.

It is important to the State of Louisiana that this suit be specially advanced for argument before this Honorable Court.

Order.

Considering the foregoing motion it is respectfully ordered
34 that this case be specially advanced and fixed for argument on the — day of ——, 1922.

—— ——,
Judge.

(Signed) A. V. COCO,
Attorney General.

(Signed) PAUL A. SOMPAYRAC,
Assistant to the Attorney General.

Endorsed on the reverse: No. 25,061. Supreme Court of Louisiana. Paul V. Lacoste et als. vs. Department of Conservation of La. Motion for Special Preference. Filed Jany. 9th., 1922, (Signed) Percy J. Heines, Dy. Clerk. Entered January 10th., 1922, (Signed) Percy J. Heines, Dy. Clerk.

(*Entering Order for Special Preference.*)

(Extract from the Minutes.)

New Orleans, Tuesday, January 10, 1922.

The Court was duly opened, pursuant to adjournment.
Present—Their Honors: Olivier O. Provosty, Chief Justice. And Charles A. O'Niell, Ben C. Dawkins, Winston Overton, John R. Land, Joshua G. Baker and John St. Paul, Associate Justices.

No. 25061.

PAUL V. LACOSTE et als.

vs.

DEPARTMENT OF CONSERVATION.

On motion of A. V. Coco, Attorney General and Paul A. Sompayrac, Assistant to the Attorney General, of counsel for the defendant and appellee: It is ordered by the Court that this cause be fixed for trial by special preference.

35 (*Motion for Time to File Briefs.*)

Supreme Court of Louisiana.

No. 25061.

P. V. LACOSTE et als.

vs.

DEPARTMENT OF CONSERVATION.

On motion of Merrick & Schwarz and Morris B. Redmann of counsel for Paul V. Lacoste et als., and on suggesting to the court that movers desire an extension of time within which to file briefs herein:

It is ordered that the time for filing briefs herein on behalf of appellants be extended until the 27th of January, 1922.

New Orleans, La., January —, 1922.

Endorsed on the reverse: No. 25.061. Supreme Court of Louisiana. Paul V. Lacoste et als., appellants vs. Department of Conservation of the State of Louisiana. Motion for extension of time to file briefs. Filed January 17th, 1921. (Signed) John A. Klotz, Dep. Clerk.

(*Cause Continued.*)

(Extract from Minutes.)

New Orleans, Tuesday, January 31st, 1922.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors: Olivier O. Provosty, Chief Justice. And Charles A. O'Niell, Ben C. Dawkins, Winston Overton, John R. Land, Joshua G. Baker and John S. Paul, Associate Justices.

No. 25061.

PAUL V. LACOSTE et als.

vs.

DEPARTMENT OF CONSERVATION.

This cause not having been reached, was ordered by the Court to be continued until to-morrow, Wednesday, the 1st day of February, 1922.

36 (*Cause Continued.*)

(Extract from Minutes.)

New Orleans, Wednesday, February 1st, 1922.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors: Olivier O. Provosty, Chief Justice, And Charles A. O'Niell, Ben C. Dawkins, Winston Overton, John R. Land, Joshua G. Baker and John St. Paul, Associate Justices.

No. 25061.

PAUL V. LACOSTE et als.

vs.

DEPARTMENT OF CONSERVATION.

This cause not having been reached, was ordered by the Court to be continued until to-morrow, Thursday, the 2nd day of February, 1922.

(*Cause Called, Argued, and Continued.*)

(Extract from Minutes.)

New Orleans, Thursday, February 2nd, 1922.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors: Olivier O. Provosty, Chief Justice, And Charles A. O'Niell, Ben C. Dawkins, Winston Overton, John R. Land, Joshua G. Baker and John St. Paul, Associate Justices.

No. 25061.

PAUL V. LACOSTE et al.

vs.

DEPARTMENT OF CONSERVATION.

This cause was called and argued by counsel. Mr. Morris B. Redmann opened the argument for the plaintiffs and appellants. Mr. Paul A. Sompayrac, Assistant Attorney General, replied for the defendant and appellee. Mr. E. T. Merrick then spoke for the plaintiffs and appellants until the hour of adjournment. The Court then ordered the cause to *the* continued until Monday, the 6th day of February, 1922, as an open case.

37 (*Cause Called, Argued, and Submitted.*)

(Extract from Minutes.)

New Orleans, Monday, February 6th, 1922.

The Court was duly opened, pursuant to adjournment.
Present—Their Honors: Olivier O. Provosty, Chief Justice. And Charles A. O'Niell, Ben C. Dawkins, Winston Overton, John R. Land, Joshua G. Baker and John St. Paul, Associate Justices.

No. 25061.

PAUL V. LACOSTE et als.

VS.

DEPARTMENT OF CONSERVATION.

This cause, continued from Thursday, February 2nd, came on this day further to be heard, and the Court having listened to the argument of Mr. E. T. Merrick, for the plaintiffs and appellants, took the cause under advisement.

(*Final Judgment.*)

(Extract from Minutes.)

New Orleans, Saturday, April 22nd, 1922.

The Court (sitting En Banc) was duly opened, pursuant to the adjournment.
Present—Their Honors: Olivier O. Provosty, Chief Justice. And Charles A. O'Niell, Ben C. Dawkins, Winston Overton, John R. Land, Joshua G. Baker, John St. Paul, Paul Leche and David N. Thompson, Associate Justices.
The following opinions and judgments were handed down by the Court en Banc:

No. 25061.

PAUL V. LACOSTE et al.

VS.

DEPARTMENT OF CONSERVATION.

By LAND, *J.*:

For the reasons assigned, the judgment appealed from is affirmed at the cost of the appellants.
Provosty, C. J., dissents.
O'Niell, J., concurs in the result.

38 *Opinion of the Court.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

New Orleans, Saturday, April 22nd, 1922.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors:

Oliver O. Provosty,
Chief Justice.
Chas. A. O'Niell,
Ben C. Dawkins,
Winston Overton,
John R. Land,
Joshua G. Baker,
John St. Paul,
Paul Leche,
David N. Thompson,
Associate Justices.

His Honor, Mr. Justice Land, pronounced the Opinion and Judgment of the Court in the following case:

39 Supreme Court of Louisiana en Banc, April 22, 1922.

No. 25061.

PAUL V. LACOSTE et als.

vs.

DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA.

Appeal from the Civil District Court, Parish of Orleans.

Hon. Wynne G. Rogers, Judge.

Mr. Justice LAND:

Petitioners, resident and non-resident, are engaged in this state, and especially in the City of New Orleans, in the business of buying and selling, importing, exporting, and dealing in hides, skins, and furs, some of which were originally taken from wild fur bearing animals and alligators in this state.

They complain that the Department of Conservation of the State of Louisiana is illegally seeking to collect from them, under the provisions of Act 135 of the General Assembly of 1920, a "severance

tax" of two cents on the dollar on the value of skins and hides purchased by them and taken from wild fur bearing animals and alligators within the state, for the reason that said act is unconstitutional.

Petitioners, therefore, declined to pay said "severance tax," and, alleging the unconstitutionality of said act, obtained an injunction from the Civil District Court of the Parish of Orleans, restraining the Department of Conservation from threatened seizure and confiscation of all shipments of hides and furs made or to be made by any of petitioners.

This injunction was dissolved and plaintiffs' suit dismissed on exception of no cause nor right of action, which was maintained by the lower court.

Plaintiffs have appealed from the judgment against them, and attack the constitutionality of Act 135 of the General Assembly of 1920 on the following grounds:

"(1) That said Act of the Legislature is violative of Article 31 of the State Constitution of 1913, in that the title of said act does not embrace nor express the object in regard to limiting the privileges of trapping fur bearing animals or alligators in this state to such persons only as shall have been bona fide residents of this state for at least the preceeding six months, as set out in Section 5 of the Act."

40 In the title of the act we find: "to allow licensed trappers to hunt wild game without additional license"; "to define trappers, fur dealers, fur buyers, resident and non-resident;" "defining the time and making an open season for the trapping of all fur bearing animals and the taking and killing of alligators in this State."

Section 1 of said act defines a trapper as follows: "A trapper shall be considered to be a person who takes the animal in its wild state and removes the skin therefrom for sale." Section 5 of said act provides: "That only such persons that shall have been bona fide residents of this state for at least the preceding six months shall be permitted to trap fur bearing animals or alligators in this state, or shall be permitted to receive license therefor." Section 4 of said act also provides: "That there be and are hereby levied the following licenses on each trapper * * * to-wit: Any trapper herein defined possessing a state wide hunting license, costing one (1) dollar, shall be permitted to trap under this law." In other words, a trapper in this state is "defined" to be, not merely the person who takes the animal in its wild state and removes the skin therefrom for sale, but he must also be a resident for at least the preceding six months before he is licensed, and must possess a hunting license. The provisions of these sections are clearly within the title of the act, as the legal qualifications for a trapper are necessarily included in and form a part of the definition.

Petitioners also complain that the title of said act fails to show that a distinction is made between resident and non-resident dealers, in regard to the amount of license tax to be paid.

We find in the title of the act these words: "levying an annual license tax on persons, firms, corporations or associations of persons

engaged in the buying of hides and skins taken from wild fur bearing animals and alligators, and prohibiting the conduct of such business without such license." We find also in the title of said act the following words: "to define trappers, fur dealers, fur buyers, resident and non-resident." These provisions in the title clearly indicate, and give notice to persons reading the title of said act,
41 that "non-resident" fur buyers and fur dealers are embraced within its scope, and that all such dealers are subject to the payment of such licenses. The levying of a different license on non-resident fur dealers and fur buyers in Section 4 of said act is a mere classification, a mere detail which it was not necessary to embrace in the title of the act, as such detail is germane and incidental to the avowed purpose of said act, as expressed in its title, to levy licenses upon all fur dealers and fur buyers, resident or non-resident. In respect to the levying of licenses, we find nothing in the title of said act that is misleading, surprising, or confusing to persons reading it.

The title of a law is not to be strictly or technically interpreted; if it states the object, according to the understanding of reasonable men, it satisfies the constitution. State vs. Boylston, 138 La. 28; Munic. No. 3 vs. Michaud, 6 An. 605. "(2) The said Act of the Legislature embraces more than one object."

Plaintiffs' counsel indicated in their brief the following as the different objects set forth in the body of the act: "One of the objects of the act, as shown by Sections 8 and 9 thereof, is the conservation of wild fur bearing animals and alligators by providing for open and closed season for hunting and trapping them."

"Another object of the act is to regulate the business of fur dealers, the shipment of furs out of the State, and to impose upon the dealers a fixed license tax in addition to the regular annual license tax."

"A third separate and distinct object of the Act is provided for in Section 3 thereof, which provides for an ad valorem tax of two cents on the dollar on the value of all skins or hides taken from any wild fur bearing animals or alligators within this State, which severance tax shall be paid by the dealer, etc."

Plaintiffs' counsel state in their brief that "not only are these objects set forth in the body of the act, but they are also expressed in the title."

It is evident from these and other subdivisions in the title of
42 Act 135 of the General Assembly of 1920, that its object is to conserve for the common benefit of the people of the state the property rights in all fur bearing animals and alligators in this state, including the valuable asset of the skins and hides of these animals, which naturally constitute a part of the common wealth of the state.

The right to preserve game and animals valuable for their skins and hides flows from an undoubted existence in the state of a police power to that end. This authority of a state is derived from the common ownership of the game and of such animals and the trust for the benefit of its people which a state exercises in relation thereto. Under said act, the wild life of the state is made the property of the state; it is a part of the state's natural resources, which the state may,

in the exercise of its police powers, enact regulations to preserve and conserve. Goer vs. Connecticut, 161 U. S. 519; Pastone vs. Pennsylvania, 322 U. S. 138; McCready vs. Virginia, 94 U. S. 391.

Act 135 of the General Assembly of 1920 is therefore a police regulation, whose object is to protect and conserve the animals designated therein for the common benefit, and the various subdivisions of the title of said act, pertaining to the "levying of a severance tax;" "fixing the time when, by whom, and under what conditions such severance tax shall be paid;" "prohibiting persons, and firms, and corporations from shipping or selling hides or skins unless said severance tax is paid;" "requiring persons dealing in hides or skins to keep records of all receipts and sales of said hides and skins and to make reports of same to the Department of Conservation"; "defining trappers, fur dealers, fur buyers, resident and non-resident"; imposing annual license taxes, etc.," all are branches of the object of the act, germane and incidental thereto, and the means of accomplishing the purpose of said act, and do not in themselves constitute different objects foreign to that embraced in the title of said act. These various subdivisions of the title relate to the conservation and protection of the animals designated in the act, and provide through the imposition of a "severance tax" the means of enforcement of the act, or police regulation enacted for that purpose. They also relate to the collection and protection of the fund derived from the "severance tax," without which the enforcement of
43 said act or police regulation would not be possible.

The constitutional requirement that a statute shall embrace only one object does not mean that each and every means necessary to accomplish an object in the law must be provided for by a separate act relating to it alone. A statute that deals with several branches of one subject does not thereby violate the constitutional requirement that the act must have only one object. State vs. Daremus, 137 La. 266; City of Shreveport vs. Nejim, 140 La. 786.

An act whose title states one object and a number of other things germane to this object and connected therewith, is not a violation of article 31 of the Constitution requiring that the title of the act state only one object. Thomas vs. Board of School Directors, 136 La. 504; State vs. J. Foto & Bro., 134 La. 152; State vs. Mauvezin, 136 La. 749.

Counsel for plaintiffs also contend in their brief that there is nothing in the title of the act to indicate any criminal liability for the violation of any of its provisions, and that, therefore, section 10 of said act declaring that the violation of any provision of said act shall constitute a misdemeanor, punishable by a fine or imprisonment, etc., is a provision in the body of the act, of which no indication is given in the title.

In this statement counsel for plaintiffs are in error, as the title of said act concludes with the words: "to provide penalties for violation of this act and to repeal all conflicting laws."

"(3) The said act is violative of the Constitution of the State of Louisiana, in that the title of said act expresses the purpose of the act to be "the levying of a severance tax," whereas Section 3 of said act,

while using the words "severance tax," in fact does not levy the tax on the severing of or on the persons who sever the skins or hides, but purport to levy a "severance tax" on the dealers in such hides and skins."

"(4) The said act is in violation of the State Constitution in that the license tax therein provided for is not equal and uniform."

We will consider objections 3 and 4 together.

44 Article 255 of the Constitution requiring equal and uniform taxation refers, in terms, to taxation on property and has no application to the taxation on occupations. State vs. Underwood, 139 La. 298.

As we have held in this opinion that Act 135 of the General Assembly of 1920 is a police regulation, it necessarily follows that the severance tax imposed in said act is not a tax levied under the Constitution for revenue, but a charge imposed under the police power of the state for carrying out a police regulation. Board vs. Richart et al., 139 La. 298; De Gruy vs. La. State Board of Pharmacy, 141 La. 896. Such severance tax or charge is, therefore, not subject to the provisions of article 229 of the Constitution of 1915.

It is to be observed on passant that said Article provides that the amount of severance tax to be collected of those engaged in the business of severing natural resources, such as timber and minerals, from the soil or water, may be either graduated or fixed according to the quantity or value of the product at the place where it is severed.

The title of Act 135 of the year 1920 declares the wild fur bearing animals and alligators of this state to be the property of the state and the skins taken from such animals to be the property of the state, until there shall have been paid to the State of Louisiana the severance tax levied thereon by the provisions of this act. The title of this act does not indicate that this severance tax shall be levied on the party severing, or on the persons who sever the skins or hides. It merely declares that the act shall "fix the time when, by whom, and under what conditions such severance tax shall be paid."

As the title and the provisions of the act plainly declare that these animals and their skins are the property of the state and shall so remain, until the severance tax is paid, it is clear that the tax or charge is levied, and its payment is made a condition precedent to the divestiture of the sovereign's title and its transfer to the person, firm, or corporation paying the tax or charge.

These provisions clearly indicate that the charge of two per cent imposed in said act was not levied as a severance tax under

45 Article 229 of the Constitution of the State, but solely as a charge or duty under the authority of the police power of the state, to put into operation and to enforce its police regulation.

It follows, therefore, that it was not necessary that the assessment of this charge should conform to the provisions of the Constitution of 1913, nor that it should be imposed upon the class of persons or at the time therein designated. These were matters which the state,

in the exertion of its police power, had the right primarily to determine, in parting with the ownership of its property in these animals and their skins and hides. In imposing this charge, the state was compelled to act upon sound business principles, and to levy the same upon the dealers in furs and skins, as such dealers are known, have established places of business, make inventories of their stocks, and are easily accessible for the purpose of collection of said charge. To levy such a charge upon an itinerant trapper at the time of severing the skin or hide, with no fixed place of abode or business, and with no inventory of stock, would deprive the State and its Department of Conservation of any efficient means of ascertaining the number or value of the skins or hides, and of collecting the charge. The result would be the crippling of the activities of the Department of Conservation of the State through lack of funds, and the indiscriminate slaughter of its animals, to say nothing of the consequent loss of the value of their skins and hides. The very object of Act 135 of 1920, the conservation of the natural resources of the state, would be defeated to a great extent, and to the detriment of the citizens of the state at large, for whose common benefit these animals and their skins and hides are protected by the state under its police power.

The imposition of such charge upon the dealer in fur and hides was not, therefore, an arbitrary and unreasonable exercise by the state of its police power, nor an unwarranted and discriminatory interference with the lawful business of such dealers, but it was demanded by the exigencies of the case, and by the necessity for protecting, in a practical and efficient manner, the revenue or fund upon which the enforcement of the police regulation of the state depends.

46 "(5) The said act is violative of the Constitution of the United States and particularly of the Fourteenth Amendment thereof, in that it denies to persons within the state's jurisdiction the equal protection of the laws; the object of the act being to relieve the trapper of any tax and to place the burden on the dealer, contrary to the policy of the state taxation in every other instance of "severance tax."

As the imposition of this charge is made under the police power of the state as a means of enforcement of its police regulation in reference to the conservation of its wild animal life, and not under the taxing power of the state, as ordained in the State Constitution, this objection must be considered from the aspect of the rights of the state in the exertion of its police power for the preservation of its natural resources.

The legitimate exercise of the police power is not subject to restraint by constitutional provisions for the general protection of the rights of individual life, liberty, and property. State vs. Schlemmer, 42 An. 1166; 10 L. R. A. 135. And the Fourteenth Amendment of the Constitution of the United States does not interfere with the proper exercise of that power. 6 R. C. L. Pars. 193, 194; L'Hote

vs. New Orleans, 177 U. S. 596; 44 Ed. 903; State vs. McCormick, 142 La. 582.

Though the Fourteenth Amendment to the United States Constitution forbids any state from making or enforcing any law which shall deny to any person within its jurisdiction the equal protection of the law, all discrimination as to persons who shall kill game within its borders is not thereby forbidden. Owing to the fact that the wild game within the borders of the state belong to the people of the state, and not to private individuals, it is lawful for the state, as the sovereign holding in trust such common property for the common benefit, to make regulations which shall exclude non-residents from an equal enjoyment of such game. Thus a state may require the procurement of licenses by all hunters and deny the privilege of obtaining such licenses to persons residing outside the state. And if the state sees fit to permit a non-resident to take game, it may impose a larger license fee; for the state having the right absolutely to exclude non-residents from hunting within its
47 borders, may admit them upon such conditions as it sees fit to impose. 12 R. C. L. p. 693 (10); Geer vs. Connecticut 161 U. S. 519, 40 L. Ed. 793; State vs. Schwartz, 119 La. 294.

Under Act 135 of 1920 the skins and hides of wild fur bearing animals and of alligators, as well as these animals themselves, are declared to be the property of the state, the common property of the people held in trust by the sovereign for their common benefit, and to be conserved and protected in the discharge of the duties of this trust under the ægis of the police power of the sovereign. The whole scheme for the accomplishment of this purpose is declared by this act to rest upon this and no other basis. It follows, therefore, that there can be no reasonable destinction drawn between the common ownership of the animals and the ownership of their skins and hides by the people of the state, for both are property of the same origin and legal status, i. e., common and not private property, to be conserved and to be disposed of under the police power of the state.

The non-resident appellants as dealers in skins and hides within the state are therefore engaged in a business which is peculiarly subject to control by the police power of the state, owing to the unusual species and status of the property in which they deal. The right of non-residents to buy and ship the skins and hides of wild fur bearing animals of the state is, therefore, not an *o*bsolute right but a mere privilege which the state may grant or withhold and for the exercise of which it may exact a charge. The case at bar, therefore, differs essentially from arbitrary classification or discrimination made by the State Legislature against persons of the same class engaged in harmless and lawful occupations affecting the private property which may compose the internal commerce of a state. The line of demarcation being thus clearly fixed, the case at bar must be differentiated by this Court from the cases of Noble vs. Douglas, 274 Fed. 672, and Yick Wo vs. Hopkins, 118 U. S. 356, upon which plaintiff's counsel confidently rely, as was properly done by Mr. Justice Fields in the case of Crowley vs. Christensen reported in 137 U. S. p. 91, 34 L. Ed. p. 624 et seq.

"(6) Act 135 of 1920, in levying a tax on exports from the State, is violative of the Interstate Commerce clause of the Federal Constitution."

48 That such a statute does not violate the Interstate Commerce law is no longer an open question. If it were still a question in dispute, it would be definitively settled against such contention by the provisions of the Lacey Act. Sec. 242, 35 Statutes at Large, p. 1137. Geer vs. Connecticut, 161 U. S. 793; State vs. Schwartz, 119 La. 294; Territory of New Mexico ex Rel. E. J. McLean and Co. vs. Denver and Rio Grande Railroad Company, 203 U. S. 38; 51 L. Ed. 78; Neilson vs. Garza E. Woods, 287 Fed. Cases No. 10,091; Patapsco Guano Co. vs. Board of Agriculture, 171 U. S. 345; 43 L. Ed. 191.

"(7) Whether we consider Act 135 of 1920 as a police regulation or a revenue law enacted under either the police or taxing powers of the State, we respectfully submit that it vests a political board with arbitrary power to make regulations that may be very oppressive to legitimate business, and delegates to such board the taxing power of the Legislature."

An inspection of Section 3 of Act 133 of 1920 discloses the fact that the so called severance tax is fixed by said section at two (2) cents on the dollar on the value of all skins or hides taken from any wild fur bearing animal or alligators in this State. Said act does not, therefore, delegate to the Department of Conservation of the State the taxing power of the Legislature, which has itself fixed in said section with exactness the rate of said so called tax. The quantum of said severance tax is not then left to the arbitrary discretion or determination of said department, which is without authority under said section to either increase or diminish the rate established by the statute.

The authority with which said department is clothed by the provisions of said section is "to ascertain the actual price of skins and hides paid by the dealer subject to pay the tax, and to determine the time when, and the manner in which said severance tax shall be paid, and to adopt rules and regulations, *not contrary to the provisions of this act,* to carry the provisions of this act into effect *in relation to the collection* of said severance tax and the licenses herein imposed." (Italics Ours.) Then follows in the next line the provision: "It shall be a violation of this act for any person, firm, corporation or association, to ship or carry from this State any skin or hide of any fur bearing animal or alligators on which the
49 severance tax is due, without the said severance tax on said skin or hide first being paid to the State of Louisiana."

Section 6 of said act requires all buyers and dealers in hides and skins to keep a complete record and to make monthly reports of all purchases and sales, and provides that the records, books and memoranda of said buyers and dealers shall be open to the inspection of the agents of the Department of Conservation. In other words, the duties imposed upon said department are not legislative, but are

of an executive character. They relate to the collection of the severance tax, the ascertainment of the amount due, and to the adoption, incidentally, and enforcement of rules and regulations, "not contrary to the provisions of this act, to carry into effect such provisions in relation to the collection of the tax."

We fail to find in the delegation by the Legislature to said Department of such necessary and reasonable authority, any arbitrary power conferred to oppress legitimate business.

However, we are dealing in the case at bar, not with the delegation of the power of taxation by the Legislature, but with the delegation of police power by the State to its Department of Conservation, a political agency especially created by the sovereign, and given exclusive authority to collect and conserve the fund to be derived for the purpose of putting into efficient operation the Conservation Act of the State for the preservation of its natural resources.

In "The Fourteenth Amendment" by Brancon it is said: "The great police power resides in the State; but it is impossible that the state should itself be present in every instance to enforce police regulations, or that it should provide for the multitudinous instances of its exercise by legislative acts. The whole time of the Legislature would be thus consumed; its acts would be endless; the thing would be utterly impracticable. Hence the necessity of the delegation of some of this power to cities, and other municipal corporations, and to counties, districts or townships." p. 211.

The necessity of the delegation of a part of the police power of the State to its Department of Conservation is likewise evident, in the enforcement of police regulations affecting the conservation of its natural resources.

For the reasons assigned, the judgment appealed from is affirmed at the Cost of the appellants.

50 Provosty, C. J., dissents.

O'Niell, J., concurs in the result.

51 (*Petition for Rehearing Filed on Behalf of Plaintiffs.*)

Supreme Court of Louisiana.

No. 25061.

P. V. LACOSTE et als., Plaintiffs and Appellants,

vs.

DEPARTMENT OF CONSERVATION OF STATE OF LOUISIANA, Defendant and Appellee.

To the Honorable the Supreme Court of Louisiana:

The petition of Paul V. Lacoste, Joseph E. Mares, John J. Babin, Henry P. Mirandona, Steinberg & Company, a commercial partnership composed of Morris Steinberg, Joseph V. Landry and Camille

J. Richard, William E. Voelkel & Co. Inc., Becker Brothers & Co., an Illinois Commercial partnership, plaintiffs and appellants, respectfully represents:

That the opinion and decree rendered in this case on the 22nd day of April 1922, is erroneous and contrary to the law and the evidence and prejudicial to the interest of petitioners, and that a rehearing should be granted in this matter for the following reasons, to wit:

1. The Court is in error in holding the tax imposed by Act 135 of 1913 is a severance tax in the sense of Article 229 of the Constitution of 1913, when as a matter of fact a severance tax defined by the State Constitution is a license tax graduated or fixed in the alternative, whereas two taxes are imposed under said statute, namely a fixed license tax and a fixed ad valorem tax.

2. The Court is in error in holding that the hides and skins that have been prepared for sale and made objects of commerce can be taxed differently from other articles of commerce, thus subjecting petitioners to two ad valorem taxes or double taxation on their stock in trade in violation of Article 225 of the Constitution of 1913, providing: "Taxation shall be equal and uniform throughout
52 the territorial limits of the authority levying the tax, and all property shall be taxes in proportion to its value, to be ascertained as directed by law; provided, the assessment of all property shall never exceed the actual cash value thereof; and provided further, that the taxpayers shall have the right of testing the correctness of their assessments before the courts of justice. In order to arrive at this equality and uniformity, the General Assembly shall provide a system of equality and uniformity in assessments based upon the relative value of property in the different portions of the State. The valuations put upon property for the purposes of State taxation shall be taken as the proper valuation for purposes of local taxation, in every subdivision of the State."

That by holding that hides and skins are thus subject to double taxation, your petitioners are deprived by the State of Louisiana of their property without due process of law, and denied by the State of Louisiana the equal protection of the law in violation of Section One of the Fourteenth Amendment of the Constitution of the United States.

3. The Court is in error in holding that Act 135 of 1920 is solely an exercise of the Police Power and not a Revenue measure.

4. The Court is in error in holding that the said Act 135 of 1920, does not illegally discriminate against your petitioner Becker Brothers & Company, who is a non-resident dealer, in charging non-resident dealers a higher license tax than local dealers in violation of Paragraph Three of Section Eight of Article One of the Constitution of the United States because the same is an attempt to regulate and restrain Interstate Commerce.

5. The Court is in error in holding that said Act 135 of 1920, does not violate the Constitution of the United States and particularly the Fourteenth Amendment thereof in delegating to the Conservation Commission the power to say when and where and
53 on which of several values the tax should be levied, thus vesting the Commission with the arbitrary power to substantially and practically increase or diminish their tax by fixing when said tax should become due and exigible, where and how it should be collected, and on which of several values calculated, thus denying to your petitioners the equal protection of the law.

6. That said Act 135 of 1920 makes skins and hides articles of commerce, and the State of Louisiana in prohibiting dealers from shipping said articles of commerce out of the State without paying an ad valorem tax of two cents on the value of each hide and skin shipped out of the State, and in prohibiting interstate carriers from accepting such shipments out of the State until said tax has been paid and unless evidence of such payment or other label required by the Department of Conservation is attached to such shipments, violates the Third Clause of Section Eight of Article One of the Constitution of the United States in that said act regulates and has the effect of regulating and restraining commerce between the States.

Petitioners further show that they will file in connection with this petition a brief in support thereof, and for the reasons hereinabove set forth and amplified in the brief a rehearing should be granted.

Wherefore, the premises considered, petitioners pray that after due consideration a rehearing be granted in this case and that finally judgment of the District Court be reversed. And for such further and general relief as law, equity and the nature of the case may require.

(Sgd.) MERRICK & SCHWARZ,
(") M. B. REDMANN,
Attorneys for Petitioners.

54 Endorsed on the reverse: No. 25,061—Supreme Court of Louisiana—P. V. Lacoste et als. vs. Department of Conservation of the State of Louisiana—(Petition for Rehearing). Filed May 5, 1922,—(Signed) John A. Klotz, Dep. Clerk.

(*Motion for Time to File Briefs.*)

Supreme Court of the State of Louisiana.

No. 25061.

P. V. LACOSTE et als.

vs.

DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA.

On motion of Merrick & Schwarz and Morris B. Redmann, of counsel for petitioners for rehearing, and on suggesting to the Court that movers desire an extension of time within which to file their brief in support of the said application for rehearing.

It is ordered that movers be allowed an extension of ten days within which to file their brief in support of the application for rehearing.

New Orleans, La., May —, 1922.

Endorsed on reverse: No. 25,061—Supreme Court Louisiana—P. V. Lacoste et als. vs. Department of Conservation of the State of Louisiana—Motion for Time to File Brief—Filed May 5, 1922,—(Signed) John A. Klotz, Dep. Clerk.

(*Rehearing Refused.*)

(Extract from Minutes.)

New Orleans, Monday, June 5th, 1922.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors: Olivier O. Provosty, Chief Justice. And Charles A. O'Niell, Ben C. Dawkins, Winston Overton, John R. Land, Joshua G. Baker, John St. Paul, Paul Leche and David N. Thompson, Associate Justices.

55 No. 25061.

PAUL V. LACOSTE et als.

vs.

DEPARTMENT OF CONSERVATION.

By the WHOLE COURT:

It is ordered that the rehearing applied for in this case be refused.

56 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify the foregoing fifty-five (55) pages to be a true and correct copy of all the proceedings had in the Civil District Court, for the Parish of Orleans in the cause entitled Paul V. Lacoste et als. vs. Department of Conservation of the State of Louisiana, bearing the No. 138,385 of the docket thereof; and, also, a true and correct copy of all the proceedings had in this, the Supreme Court of the State of Louisiana, on the appeal taken by the said plaintiffs, Paul V. Lacoste et als, which record is now on the files of this Court under the No. 25,061.

In witness whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the City of New Orleans, this the 22d day of June, Anno Domini, one thousand, nine hundred and twenty-two.

[Seal of the Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

57 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Olivier O. Provosty, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Paul E. Mortimer is the Clerk of the Supreme Court of Louisiana; that the signature of Paul E. Mortimer to the foregoing certificate is in the proper handwriting of him, the said clerk, and that full faith and credit are due to all his official acts as such clerk.

In witness whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the city of New Orleans, this the 22d day of June, Anno Domini, one thousand, nine hundred and twenty-two.

[Seal of Supreme Court of the State of Louisiana.]

OLIVIER O. PROVOSTY,
Chief Justice of the Supreme Court of Louisiana.

58 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the Supreme Court of Louisiana is the highest Court of law in said State; that the Honorable Olivier O. Provosty is Chief Justice of the said Court, and that his signature to the foregoing certificate is genuine.

In witness whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the city of New Orleans, this the 22d day of June, Anno Domini, one thousand, nine hundred and twenty-two.

[Seal of Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

59 (*Original Petition for Writ of Error.*)

Supreme Court of Louisiana.

No. 25061.

PAUL V. LACOSTE et als., Plaintiffs-in-Error,

vs.

DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA,
Defendant-in-Error.

Now come Paul V. Lacoste, Joseph E. Mares, Henry P. Mirandona, John J. Babin, Steinberg & Company, a commercial partnership, William E. Voelkel & Company Inc., and Becker Brothers & Company, a commercial partnership, by Edwin T. Merrick, Ralph J. Shewarz, and Morris B. Redmann, their attorneys, and complain that in the record and proceedings and also in the rendition of the judgment in a suit between Paul V. Lacoste, Joseph E. Mares, Henry P. Mirandona, John J. Babin, Steinberg & Company, William E. Voelkel & Company, and Becker Brothers & Company, Plaintiffs, and the Department of Conservation of the State of Louisiana, Defendant, in the Supreme Court of the State of Louisiana, being the

highest court of law and equity of the said State in which a decision could be had in said suit, in which the final judgment was rendered on the 5th of June, 1922, wherein the plaintiffs and plaintiffs in error assigned as error among other things, that

Whereas, Paul V. Lacoste, Joseph E. Mares, Henry P. Mirandona, John J. Babin, Steinberg & Company, William E. Voelkel & Company, and Becker Brothers & Company, plaintiffs in error, on the 6th of September 1921, instituted a suit in the Civil District Court for the Parish of Orleans, State of Louisiana, against the Department of Conservation of the State of Louisiana to enjoin the said Department of Conservation of the State of Louisiana from attempting in any manner except by civil suit to enforce the provisions of Act 135 of the General Assembly of the State of Louisiana, Regular Session of the year 1920; and,

60 Whereas, the Department of Conservation of the State of Louisiana, through the Attorney General of the State of Louisiana, in answer to the said suit filed an exception of no cause or right of action and praying that the writ of injunction issued as prayed for by plaintiffs in error should be dissolved and the case dismissed; and,

Whereas, on the trial of the said exception of no cause of action, on the 17th of October, 1921, plaintiffs in error, through their counsel, urged upon the Court that the said Act 135 of the General Assembly of the State of Louisiana for the year 1920, violated the Constitution of the United States, as alleged and shown by the petition; and,

Whereas, the Civil District Court for the Parish of Orleans, State of Louisiana, in a written opinion, passed upon the Federal questions raised, adversely to the contentions of plaintiffs in error, and against the constitutional rights, titles and immunity of the said plaintiffs in error, and maintained the said exception of no cause of action, dismissing the suit of plaintiffs in error and holding the said statute to be valid and constitutional; and,

Whereas, in the same entitled and numbered cause, on appeal before the Supreme Court of the State of Louisiana, the invalidity of the said statute was urged by plaintiffs in error because of its contravention of the provisions of the Constitution of the United States, in the following respects:

61 (1) The tax levied by the said statute contravenes Paragraph 3 section 8, of Article I of the Constitution of the United States, and Article I, Section 10, paragraph 2, of the Constitution of the United States.

(2) The provisions of the said statute are in conflict with the Fourteenth Amendment of the Federal Constitution, because they deny to plaintiffs in error, persons within the jurisdiction of the State, the equal protection of the laws, and delegate to a Commission arbitrary powers of taxation and regulation, depriving plaintiffs in error and other citizens of the United States of their liberty and property without due process of law, and seek, contrary to

Paragraph Three, Section Eight, of Article One of the United States Constitution, to regulate commerce between the states; and,

Whereas, a final judgment was rendered therein, as above stated, by the Supreme Court of Louisiana, in which the said Court passed on the Federal constitutional questions raised, adversely to plaintiffs in error, refusing the relief sought in said suit and adjudging the said statute not to be in conflict with the provisions of the Constitution of the United States, and holding that plaintiffs in error are liable for the taxes imposed by the statute, and the costs of this cause.

This judgment, your petitioner shows, was erroneous; as shown by and upon the ground stated in the assignment of errors filed herewith, all of which appears in the record and proceedings in said suit, manifest error has happened to the great damage of Paul V. Lacoste, Joseph E. Mares, Henry P. Mirandona, John J. Babin, Steinberg & Company, William E. Voelkel & Company Inc. and Becker Brothers & Company.

62 Wherefore petitioners, plaintiffs in error, pray for the allowance of a writ of error to operate as a supersedeas and such other process as may cause the same to be corrected by the Supreme Court of the United States.

EDWIN T. MERRICK,
RALPH J. SCHWARZ,
Attorneys.
MORRIS B. REDMANN,
Attorney.

Order.

Let the prayer of the foregoing petition be granted, and let a writ of error to operate as a supersedeas be allowed as prayed for, upon petitioners' furnishing bond with solvent surety, in the sum of one thousand dollars conditioned as the law directs.

New Orleans, La., June 15th, 1922.

[Seal of Supreme Court of the State of Louisiana.]

OLIVIER O. PROVOSTY,
Chief Justice, Supreme Court of Louisiana.

[Endorsed:] 25061. Paul V. Lacoste et als. vs. Department of Conservation of the State of Louisiana. Petition & Order for Writ of Error. June 15, 1922. Paul E. Mortimer.

63 *Assignment of Errors.*

Supreme Court of Louisiana.

No. 25061.

PAUL V. LACOSTE et als., Plaintiffs in Error,

vs.

DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA, Defendants in Error.

To-wit, on the — day of ——, in the year of our Lord, One Thousand Nine Hundred Twenty-two, at the October Term Nineteen Twenty-two, — the Supreme Court of the United States in the City of Washington and District of Columbia, comes the said Paul V. Lacoste, Joseph E. Mares, Henry P. Mirandona John J. Babin, Steinberg & Company, a commercial partnership composed of Morris S. Steinberg, Joseph E. Landry and Camille J. Richard, William E. Voelkel & Company, Inc., Becker Brothers & Company, a commercial partnership, and say that in the record and proceedings in the above entitled matter there is manifest error in this, viz:

First. That Whereas, at the regular session of the General Assembly of the State of Louisiana, begun and held in the City of Baton Rouge, said State, on the tenth day of May 1920, a statute, being Act No. 135 of the General Assembly of the State of Louisiana of the year 1920, was enacted; and

Whereas, the said act is entitled:

"An Act declaring wild fur bearing animals and alligators to be the property of the State and the skins taken from such animals to be the property of the State until there shall have been paid the State of Louisiana through the Department of Conservation the severance tax levied thereon by the provisions of this act; levying an annual license tax on persons, firms, corporations or associations of persons engaged in the buying of hides and skins taken from wild fur bearing animals and alligators, and prohibiting the conduct of such business without such license; levying a severance tax of two (2¢) cents on the dollar of and on the value of the hides and skins taken from wild fur bearing animals and alligators of this State; fixing the time when, by whom, and under what conditions such severance tax shall be paid; defining the time and making an open season for the trapping of all fur bearing animals and the
64 taking and killing of alligators in this State; to allow licensed trappers to hunt wild game without additional license; to prohibit persons, firms, corporations or associations from shipping or selling hides or skins taken from wild fur bearing animals or alligators of this State unless said severance tax is paid thereon; requiring all persons dealing in hides and skins taken from wild fur bear-

ing animals and alligators of this State to keep record of all receipts and sales of said hides and skins and to make reports of same to the Department of Conservation; to define trappers, fur dealers, fur buyers, resident and non-resident; to authorize the Department of Conservation to adopt rules and regulations providing for the collecting of the severance tax and licenses herein imposed and regulating the handling and disposition of all hides and skins of fur bearing animals and alligators; to provide penalties for the violation of this act and to repeal all conflicting laws." And

Whereas, the said Act of the General Assembly of the State of Louisiana defines a "Dealer" as follows:

Sec. 1 (Par. 4). "A dealer in hides and skins is one who either buys from a trapper and ships or exports from this State the skins and hides so bought, or buys from a buyer and exports from this State the skins and hides so bought, or buys from either a trapper or buyer and sells such skins and hides for manufacture into a finished product in this State. Dealers are hereby divided into two classes, namely resident and non-resident. Resident dealers are those who have for a period of six months previous to their application for license have been bona fide residents of this State. All others are non-resident dealers. Any person who ships or carries skins and hides of fur bearing animals or alligators out of the State shall be considered to be a dealer." And

Whereas, said Act provides as follows:

Sec. 3. "That there be and is hereby levied a severance tax of two (2¢) cents on the dollar on and of the value of all skins and hides taken from any wild fur bearing animals or alligators within this State, which severance tax shall be paid by the dealer hereinabove defined, to the State, through the Department of Conservation, which Department is hereby authorized and empowered to ascertain the actual purchase price of skins and hides paid by the dealer subject to pay the tax and to determine the time when, and the manner in which, such severance tax shall be paid, and to adopt and enforce rules and regulations, not contrary to the provisions of this Act, to carry the provisions of this Act into effect in relation to the collection of said severance tax and the licenses herein imposed. It shall be a violation of this act for any person, firm, corporation, or association to ship or carry from this State any skin or hide of any fur bearing animal or alligator on which the severance tax is due, without the said severance tax on said skin or hide first being paid to the State of Louisiana."

Sec. 4 (Par. 4). "Any resident dealer herein defined, before commencing business, must procure annually from the Department of Conservation, a dealer's license which shall be furnished upon the payment of the sum of Twenty-five ($25.00) Dollars, and the filing of such form of application as may be determined by the Department of Conservation." And

65 Whereas, the said Act provides further:

Sec. 6. "That it shall be the duty of all buyers and dealers in hides and skins of fur bearing animals and alligators within the State of Louisiana to keep a complete record of all purchases and sales made by them, showing the number and kind of hides and skins bought and sold, from whom, the date of said purchase, and the amount paid for each purchase, and when each purchase was made, and to make a monthly report, or otherwise, to the Department of Conservation, giving all information to said Department that it may require under its rules and regulations. All records, books and memoranda, etc., of said buyers and dealers, shall be open at all times to the inspection of the duly authorized agents of the Department of Conservation. Any trapper may be required by the Department of Conservation to furnish it any information needed to check the records of buyers and dealers."

Sec. 7. "That all monies payable under the provisions of this act shall be paid to and collected by the Department of Conservation under such rules and regulations as said Department may require; and all monies so paid shall go to the credit of the Department of Conservation in the State Treasury as is now done with the other funds of the said Department." And

Whereas, the only regulatory measures provided for in the said act are contained in Sections Eight and Nine thereof, providing for an open season during which it shall be lawful to trap fur bearing animals and to take or kill alligators and making it unlawful to take or kill the said animals or alligators at any other time; and Section Ten, providing penalties for the violation of any of the provisions of the Act. And,

Whereas, the plaintiffs in error on the 6th day of September 1921, filed in the Civil District Court for the Parish of Orleans, State of Louisiana, Court of record and of proper jurisdiction, a petition reciting that plaintiffs in error were severally engaged in the State of Louisiana in the business of buying and selling, importing and exporting and dealing in hides, skins and furs taken from wild fur bearing animals and alligators in the State of Louisiana; that they have always paid the personal property tax levied on their stock in trade consisting of such skins hides and furs and have always paid the general annual license tax imposed by the State of Louisiana; that the Department of Conservation of the State of Louisiana acting under the provisions of Act 135 of 1920, is seeking to collect from plaintiffs in error the severance tax of two cents on the dollar
66 on and of the value of skins and hides taken from wild fur bearing animals and alligators within the State of Louisiana; that plaintiffs in error refuse to pay the said tax for the reason that the said act of the Legislature under which same is sought to be levied and collected is unconstitutional being in violation of both the Constitution of the United States and the Constitution of the State of Louisiana; that because of plaintiffs in error refusing to pay the said tax, the Department of Conservation of Louisiana is threatening and is about to seize and confiscate shipments of hides and furs

made by plaintiffs in error and that such action would be unwarranted, unauthorized, illegal, and a taking of the property of plaintiffs in error without due process of law, and prayed for a writ of injunction enjoining the said Department of Conservation of the State of Louisiana from attempting to enforce the provisions of the said Act 135 of 1920. And

Whereas, the said Civil District Court for the Parish of Orleans ordered a writ of injunction to issue as prayed for by plaintiffs in error, and said writ of injunction did so issue, and

Whereas, the Department of Conservation of the State of Louisiana through the Attorney General for the State of Louisiana in answer to the said petition filed an exception of no cause or right of action and praying that the said injunction should be dissolved and the case dismissed. And,

Whereas, on the trial of the said exception of no cause of action on the 17th day of October 1921, plaintiffs in error through their counsel urged upon the Court that the said Act 135 of 1920 of the General Assembly of the State of Louisiana, violated the Federal Constitution as alleged and shown in the petition in the following respects:

1. The said Act levies a tax on Interstate Commerce and on exports from the State in that it singles out for taxation
67 these hides and furs which are bought for shipment or exportation from the State after having been prepared by the trapper or buyer for such purpose, and thus violates paragraph Three, Section Eight of Article One of the United States Constitution, and Article One, Section Ten, Paragraph Two of the Constitution of the United States.

2. That the said statute contravenes the Fourteenth Amendment of the United States Constitution in that it denies to plaintiffs in error, persons within the State's jurisdiction the equal protection of the law and deprives them of their property without due process of law. That the said Civil District Court for the Parish of Orleans, State of Louisiana in a written opinion passed upon the federal questoins raised, adversely to the contentions of plaintiffs in error and against the constitutional rights, titles and immunities of the said plaintiffs in error and maintained the said exception of no cause of action, dismissing the suit of plaintiffs in error and holding the said statute to be valid and constitutional. And,

Whereas, in the same entitled and numbered cause on appeal before the Supreme Court of the State of Louisiana the invalidity of said statute was urged by plaintiffs in error because of its contraventions raised, adversely to the contentions of plaintiffs in error and following respects:

1. The tax levied by Act 135 of 1920 against none other than those who buy hides and skins prepared for shipment or export from the State, that is, the "dealers" as defined by Section Three, Paragraph Four of the Act, contravenes Paragraph Three Section Eight of Article One of the Constitution of the United States, and Article

One, Section Ten, Paragraph Two of the Constitution of the United States.

2. The said statute in prohibiting carriers from accepting for interstate shipment, and plaintiffs in error from shipping in
68 interstate commerce, hides and skins and furs unless in accordance with the rules of the Department of Conservation certain tags and labels were attached thereto is regulatory of interstate commerce and violates Paragraph Three of Section Eight of Article One of the Constitution of the United States.

3. That in singling out those who deal in furs and hides that, with the permission and sanction of the State have become articles of commerce, and imposing upon such articles of commerce only, an ad valorem tax of two cents in addition to the general personal property tax levied on the stock in trade of all merchants violates the Fourteenth Amendment of the Federal Constitution by denying to plaintiffs in error, persons within the jurisdiction of the State, the equal protection of the laws.

4. That the said State statute delegates to a commission, whose members are appointed and not elected, arbitrary powers of taxation and regulation, and therefore, in this respect such statute is violative of the Fourteenth Amendment of the Constitution of the United States.

5. That the said tax is not imposed, assessed, levied or collected in accordance with the provisions of the State Constitution; and its enforcement in violation of the tax provisions of the State Constitution of 1913, on the theory that the said tax is in the nature of an inspection charge or quarantine fee, when in fact it is a tax for revenue, constitutes a deprivation of the property of plaintiffs in error without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States. And,

Whereas, the Supreme Court of Louisiana passed on the Federal Questions raised, adversely to plaintiffs in error,

Now, therefore, the judgment of the Supreme Court of Louisiana is erroneous in holding that the provisions of said Act 135 of 1920 of the Louisiana General Assembly are not in conflict with
69 and in violation of the provisions of Paragraph Three, Section Eight of Article One of the Constitution of the United States, which confers on Congress the exclusive power to regulate commerce among the several States and Foreign Countries, for that the State of Louisiana by and through the provisions of said Statute assumed and seeks

(*a*) To levy a tax on shipments from the State.

(*b*) To burden interstate commerce by prescribing, through its Department of Conservation under the arbitrary powers conferred on said Department by the statute, regulations of interstate shipments.

Second. The Court erred in holding that the said act did not violate Paragraph Two, Section Ten of Article One of the Constitution

of the United States, providing no State shall without the consent of Congress lay any imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws, for that the said State of Louisiana by and through the provisions of said act, does levy a two cents ad valorem tax on exports from the State.

Third. The Court erred in holding that the provisions of the said act are not in conflict with and in violation of the provisions of the Fourteenth Amendment of the Constitution of the United States for that the State of Louisiana by and through the provisioins of the said act assumes and seeks:

(*a*) To deprive the plaintiffs in error and other citizens of the United States of liberty and property without due process of law.

(*b*) To deny to the plaintiffs in error and other citizens and persons within the jurisdiction of the State of Louisiana the equal protection of the law.

Fourth. The Court erred in holding that the provisions of said act imposing a two per cent. ad valorem tax on plaintiffs in error
70 in addition to the general personal property tax imposed upon all stock in trade of all merchants, which additional tax is imposed on no others, do not unlawfully discriminate against plaintiffs in error and do not deny to plaintiffs in error the equal protection of the law, on the erroneous theory that such hides and skins intended by the Statute for interstate commerce are still sufficiently the property of the State to permit of discriminatory and unequal taxation.

Fifth. The Court erred in holding that the provisions of said act do not cast a special burden upon those engaged in shipping hides and furs from the State from which burdens other merchants or dealers are exempt.

Sixth. The Court erred in holding that the provisions of said act are uniform in their operation throughout the State upon all citizens of the State similarly situated.

Seventh. The Court erred in holding that the said act does not confer on the Department of Conservation arbitrary powers of taxation and regulation, in that it confers on them the power to arbitrarily fix the value upon which the tax therein sought to be levied is to be calculated and to make such rules and regulations as it shall determine for the collection of the said tax, determine the time when and the manner in which such tax shall be paid, to adopt and enforce rules and regulations, and to require such information, reports, and data as it may see fit from plaintiffs in error and others.

Eighth. The Court erred in holding that the two per cent. ad valorem tax assessed against plaintiffs in error and other "dealers" by the provisions of said act and the rules and regulations of the Department of Conservation are in the nature of an inspection charge and not of a tax, and is, therefore, not subject to the restrictions and

provisions of the tax clauses of the State Constitution, thus depriving plaintiffs in error of their property, rights, privileges and im-
71 munities without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States.

Ninth. The Court erred in ordering judgment to be entered and in entering judgment against plaintiffs in error dismissing their suit.

EDWIN T. MERRICK,
Attorney.
RALPH J. SCHWARZ,
Attorney.
MORRIS B. REDMANN,
Attorney.

[Endorsed:] No. 25061. Supreme Court Louisiana. Paul V. Lacoste et als. vs. Department of Conservation of the State of Louisiana. Assignment of Errors. Filed June 15th, 1922. Paul E. Mortimer, Clerk.

72 *Bond for Writ of Error.*

Know all men by these presents that we, Paul V. Lacoste, Steinberg & Company, William E. Voelkel & Co. Inc., Becker Brothers & Co., as principals, and American Surety Co. of New York, as Surety, are held and firmly bound unto the Department of Conservation of the State of Louisiana in the full and true sum of One Thousand ($1,000.00) Dollars to be paid to the said Department of Conservation of Louisiana, its certain attorney or assigns to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 21 day of June in the year of Our Lord One Thousand Nine Hundred Twenty-two.

Whereas, lately at a term of the Supreme Court of the State of Louisiana holding session in and for the State of Louisiana, at the City of New Orleans in a suit depending in the said Supreme Court, wherein Paul V. Lacoste, Joseph E. Mares, Henry P. Mirandona & Co., John J. Babin, Steinberg & Company, William E. Voelkel & Co. Inc., and Becker Brothers & Co., are plaintiffs and the Department of Conservation of the State of Louisiana is defendant, judgment was rendered against Paul V. Lacoste, Joseph E. Mares, Henry P. Mirandona & Co., John J. Babin, Steinberg & Company, William E. Voelkel & Co. Inc., and Becker Brothers & Co., and in favor of the Department of Conservation of the State of Louisiana, defendant, and the said plaintiffs having obtained a writ of error to operate as a supersedeas and filed a copy in the Clerk's Office of the State
73 Supreme Court to reverse the judgment in the aforesaid suit and a citation directed to the said Department of Conservation of the State of Louisiana, citing and admonishing it to be and appear at the opening of the Supreme Court of the United States to be held at Washington within thirty days from the granting of the writ of error.

Now the condition of the above obligation is such that if the said Paul V. Lacoste, Joseph E. Mares, Henry P. Mirandona & Co., John J. Babin, Steinberg & Company, William E. Voelkel & Co. Inc., and Becker Brothers & Co. shall not prosecute their writ to effect and answer all damages and costs if they fail to make their plea good then the above obligation to be void, else to remain in full force and effect.

(Signed) P. V. LACOSTE.
" W. E. VOELKEL & CO., INC.,
Per P. V. LACOSTE,
Agt.
" STEINBERG & CO.
J. F. LANDRY.
" BECKER BROS. & CO.,
Pr. MERRICK & SCHWARZ,
Attys.
MORRIS B. REDMANN.
" AMERICAN SURETY CO. OF NEW YORK,
" By CHAS. HOFFMAN,
Resident Vice-President.

Attest:
C. MURPHY,
Resident Assistant Secretary. [SEAL.]

Witnesses:
(Sgd.) PAUL E. CHEASEZ.
" M. J. FORTIER, JR.

Approved:
New Orleans, Louisiana, June —, 1922.
(Signed) OLIVIER O. PROVOSTY,
[SEAL.] *Chief Justice of Supreme Court of Louisiana.*

74 Endorsed on the reverse: No. 25,061. Supreme Court Louisiana. P. V. Lacoste et al., Plaintiffs-in-error vs. Department of Conservation of the State of Louisiana, Defendant-in-error. Bond for Writ of Error. Filed June 21, 1922. (Signed) Paul E. Mortimer, Clerk.

75 (*Original Writ of Error.*)

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Louisiana, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be

had in the said suit between Paul V. Lacoste, Joseph E. Mares, Henry P. Mirandona, John J. Babin, Steinberg & Co., William E. Voelkel & Company Inc., & Becker Brothers & Company, plaintiffs, and the Department of Conservation of the State of Louisiana, Defendant, being cause No. 25,061 of the docket of the Supreme Court of the State of Louisiana, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn
76 in question the construction of the clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Paul V. Lacoste, Joseph E. Mares, Henry P. Mirandona, John J. Babin, Steinberg & Co., William E. Voelkel & Company Inc., and Becker Brothers & Company, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable William Howard Taft, Chief Justice of the Supreme Court of the United States, the 15th day of June, in the year of our Lord one thousand nine hundred and twenty-two.

[Seal of U. S. District Court for the Eastern Dist. of La.]

H. J. CARTER,
Clerk of the District Court of the United States for the Eastern District of Louisiana.

Allowed by:

[Seal of Supreme Court of the State of Louisiana.]

OLIVIER O. PROVOSTY,
Chief Justice, Supreme Court of Louisiana.

[Endorsed:] No. 25061. Paul V. Lacoste et al., Plaintiffs-in-error, vs. Department of Conservation of the State of Louisiana Defendants-in-error. Writ of Error. Filed June 15, 1922. Paul E. Mortimer, Clerk.

77 *Certificate of Lodgment.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that there was lodged with me, as such clerk, on June 15th, 1922, in the cause entitled Paul E. Lacoste et als., Plaintiffs-in-error, vs. Department of Conservation of the State of Louisiana, Defendant-in-error, No. 25061:

1st. The original petition for writ of error as herein set forth.

2nd. The original assignment of errors, as herein set forth.

3rd. Bond for Writ of error (filed June 21st, 1922), a copy of which is herein set forth.

4th. The original writ of error (filed June 15th, 1922), as herein set forth.

5th. Two copies of the writ of error; one copy to be served on the defendant-in-error, and one copy to be lodged in my office.

In witness whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the city New Orleans, this the 22d day of June, Anno Domini, one thousand, nine hundred and twenty-two.

[Seal of the Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

78 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Department of Conservation of the State of Louisiana, through the Attorney General of the State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana, at New Orleans, wherein Paul V. Lacoste, Joseph E. Mares, Henry P. Mirandona & Co., John J. Babin, Steinberg & Company, William E. Voelkel & Co. Inc., Becker Brothers & Co. are plaintiffs in error, and Department of Conservation of the State of

Louisiana is defendant in error to show cause, if any there be, why the judgment rendered against the said Plaintiffs in Error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Wm. Howard Taft, Chief Justice of the Supreme Court of United States, this 21 day of June in the year of our Lord one thousand nine hundred and twenty-two.

[Seal of the Supreme Court of the State of Louisiana.]

OLIVIER O. PROVOSTY,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] June 21/22. Paul A. Sompayrac, Assist. Atty. General, State of Louisiana. No. 25061. P. V. Lacoste et als., Plaintiffs-in-Error, vs. Department of Conservation of the State of Louisiana, Defendant-in-Error. Citation for Return and Writ of Error. Sheriff's R. Received Wednesday, Jun. 21, 1922. On the 21st day of June 1922, served a copy of the within Citation accompanying Writ of Error on Department of Conservation of the State of Louisiana, through Attorney General of the State of La., by leaving the same at his office, New Court House Bldg., Conti & Royal street, in the hands of Paul A. Sompayrac, Assist. Attorney Gen'l, a person apparently over the age of 18 years, whose name and other facts connected with this service I learned by interrogating the said Paul A. Sompayrac, Assist. Attorney Gen'l, the said A. V. Coco, Attorney General, being absent from his office at time of said service. Returned same day. Sheriff's fees. Geo. J. Marin, Deputy Sheriff of Orleans Parish. Filed June 23, 1922. Percy J. Heines, Dy. Clerk.

Sworn to and subscribed before me, at the City of New Orleans, this the twenty third day of June, A. D. 1922.

[Seal of the Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of La.

79 *Return to Writ.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the complete record of the proceedings had in the within entitled case, together with all things concerning the same.

In witness whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the city of New Orleans, this the 22d day of June, Anno Domini, one thousand, nine hundred and twenty-two.

[Seal of the Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

Endorsed on cover: File No. 29,003. Louisiana Supreme Court. Term No. 453. Paul V. Lacoste, Joseph E. Mares, Henry P. Mirandona, et al., plaintiffs in error, vs. Department of Conservation of the State of Louisiana. Filed June 29th, 1922. File No. 29,003.

(6980)

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923.

No. 65.

PAUL V. LACOSTE, JOSEPH E. MARES, HENRY P. MIRANDONA, ET AL., PLAINTIFFS IN ERROR,

versus

DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

BRIEF ON MERITS IN BEHALF OF DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA, DEFENDANT IN ERROR.

A. V. COCO,
Attorney General of the State of Louisiana.
PAUL A. SOMPAYRAC,
Assistant Attorney General of the State of Louisiana.

(29,003)

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 65.

PAUL V. LACOSTE, JOSEPH E. MARES, HENRY P. MIRANDONA, ET AL., PLAINTIFFS IN ERROR,

versus

DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA.

BRIEF FOR DEFENDANT IN ERROR ON MERITS.

Statement of the Case.

A motion to dismiss the writ of error in this case was filed by the State of Louisiana, and, by this honorable court, was referred to the merits.

On pages 2*b* and 4 of the brief of the defendant in error, filed to sustain the motion to dismiss, is contained this statement of the case:

> "Paul V. Lacoste and others, plaintiffs in error, sued out a writ of injunction from the Civil District

Court, Orleans Parish, Louisiana, enjoining the Department of Conservation of the State of Louisiana from seeking to collect, under provisions of Act 135 of the General Assembly of 1920, a "Severance Tax" of two cents on the dollar of the value of skins and hides purchased by them and taken from wild fur-bearing animals and alligators killed within the State on the alleged ground that the Act is unconstitutional. The injunction also restrained the Department of Conservation from alleged threatened seizure and confiscation of hides and furs in possession of plaintiff in error, acquired by them in the State of Louisiana as dealers in skins and hides.

"The Attorney General of Louisiana appeared for the Department of Conservation, which is a constitutional body, and filed an exception to the petition of plaintiffs on the ground that it disclosed no cause nor right of action. After due hearing, the exception was sustained by the court that issued the injunction, and from that judgment an appeal was taken by plaintiffs in error to the Supreme Court of Louisiana. The decision of the lower court was affirmed by the Supreme Court and an application for a rehearing was denied."

The decision of the Supreme Court of Louisiana complained of by the plaintiff in error is reproduced in the record in this case on pages 33 to 41, inclusive.

The decision of the trial judge, affirmed by the Supreme Court of Louisiana, is printed on pages 19 to 23 of the record.

ARGUMENT.

On pages 8 and 9 of the brief of plaintiff in error in opposition to dismiss writ is given a gist of errors assigned by them. We shall controvert their assignment of errors and endeavor to point out wherein their contentions are unfounded.

In gist headed "First," on page 8 of brief adverted to, it is said that "Act 135 of 1920 levies a tax on interstate commerce and was passed for that purpose, because, although it is called a 'Severance Tax,' *it is levied solely against dealers in hides shipping the cured hides out of the State, and only taxes such dealers.*"

To show that the contention stated above is unfounded, it is necessary to quote only from section 3 of Act 135 of 1920 of the State of Louisiana:

> "SECTION 3. *Be it further enacted,* That there be and is hereby levied a severance tax of two cents (2c.) on the dollar on and of the value of *all skins and hides taken from any wild fur-bearing animals* or alligators within the State, which severance tax shall be paid by the dealer hereinabove defined to the State through the Department of Conservation * * *" (p. 4, brief of plaintiff in error opposing motion to dismiss).

The above quotation from section 3 of Act 135 of 1920 shows conclusively that there is no foundation for the statement of plaintiff in error that the severance tax of two cents, complained of, is levied solely upon dealers who ship out of the State. The quotation from the statute shows, on the contrary, that the severance tax of two cents is levied "on the

value of all skins and hides taken from any wild fur-bearing animals and alligators within the State."

The attempt made in the brief of plaintiff in error to convince the court that the tax is levied solely upon the dealers in hides and skins who ship them from the State must fail, in view also of the provision contained in section 1 of the act cited on page three of the brief of plaintiff in error against the motion to dismiss, which provision is as follows:

> "A dealer in hides and skins is one who either buys from a trapper and ships or exports from this State the skins and hides so bought, or buys from a buyer and exports from this State the skins and hides so bought, or buys from either a trapper or buyer and sells such skins and hides for manufacture into a finished product in this State."

It is clear from the above quotation that the provisions of the act do not discriminate against interstate commerce, nor in any manner regulate it. The tax is imposed upon all skins and hides taken from fur-bearing animals within the State, and dealers who sell to manufacturers within the State are called upon to pay the tax, as well as dealers who sell to manufacturers in other States (Heisler *vs.* Thomas Colliery, No. 541, October Term, 1922).

In passing upon the constitutionality of the tax and providing for the manner in which and by whom the same should be paid, the Supreme Court of Louisiana held:

> "In imposing this charge the State was compelled to act upon sound business principles and to levy the same upon dealers in furs and skins as such dealers are known have established places of business, make inventories of their stocks and are easily accessable

> for the purpose of collection of said charge. To levy such a charge upon an itinerate trapper at the time of severing such skin or hide, with no fixed place of abode or business and with no inventory of stock, would deprive the State and its Department of Conservation of any efficient means of ascertaining the number or value of the skins and hides and of collecting the charge. The result would be a crippling of the activities of the Department of Conservation of the State, through lack of funds, and the indiscriminate slaughter of its animals, to say nothing of the consequent loss of the value of their skins and hides." (See p. 38 of Record.)

In the above statement, the court made clear that the Legislature has exercised its police power in a reasonable manner, with no unjust, unconstitutional discrimination, and that the provisions of the law meet the exigencies of case presented by the necessity for collecting in a practical and efficient manner the revenue or fund upon which the enforcement of the police regulation of the State depends.

The Wild Life is the Property of the State.

The provisions of Act 135 of 1920 have for their object the conservation of game and wild animals valuable for their flesh, skins and hides. The power of the State to enact the legislation assailed by plaintiff in error flows from the police power of the State and its common ownership of wild life and trust for the benefit of the people.

Section 2 of Act 135 (p. 4 of plaintiff's brief in opposition to motion to dismiss writ) provides:

> "All the wild fur-bearing animals and alligators in this State, and the skins taken from such animals

> are hereby declared, for the purpose of the collection of a severance tax, to be and continue to be the property of the State, until the severance tax levied thereon shall have been paid to the State through the Department of Conservation."

The act is purely a police regulation to conserve the valuable wild animals and game in the State. That the State has full power to enforce laws of the character of Act 135 was decided by the Supreme Court of the United States in Greer *vs.* United States, 161 U. S., 519 *et seq.*, and on page 533 the court, with approval, cited the following:

> "The preservation of such animals as are adapted to consumption as food or to any other useful purpose, is a matter of public interest; and it is within the police power of the State, as the representative of the people in their united sovereignty, to make such laws as will best preserve such game, and secure its beneficial use in the future to the citizens, and to that end it may adopt any reasonable regulations, not only as to time and manner in which such game may be taken and killed, but also imposing limitations upon the right of property in such game after it has been reduced to possession. Such limitations deprive no person of his property, because he who takes or kills game had no previous right of property in it, and when he acquires such right by reducing it to possession he does so subject to such conditions and limitations as the Legislature has seen fit to impose."

Plaintiff in error has quoted, on page 35 of his brief, a paragraph from a decision, which fully sustains the position of the defendant in error, to the effect that the laws of a State enacted to protect wild life are not unconstitutional because

they remotely affect interstate commerce. The quotation is as follows:

> "Aside from the authority of the State, derived from the common ownership of game and the trust for the benefit of its people which the State exercised in relation thereto, there is another view of the power of the State in regard to the property in game, which is equally conclusive. The right to preserve game flows from the undoubted existence in the State of a police power to that end, which may be none the less efficiently called into play, because by doing so interstate commerce may be remotely and indirectly affected." Citing:
>
> Kidd *vs.* Pearson, 128 U. S., 1.
> Hall *vs.* De Guir, 95 U. S., 485.
> Sherlock *vs.* Alling, 93 U. S., 99, 103.
> Gibbons *vs.* Ogden, 9 Wheat., 1.

No Allegations in Plaintiff's Petition that Bring This Case under Interstate Commerce Clause of the Constitution of the United States.

In Champlain *vs.* Brattleboro, decided by the Supreme Court of the United States on December 11, 1922, the Chief Justice held:

> "The interstate commerce clause of the Constitution does not give immunity to movable property from local taxation, which is not discriminative unless it is in actual continuous transit in interstate commerce."

The court, upon examining the petition in this case, which appears on pages 1 to 4, inclusive, of the record, will fail to find any allegation that the Department of Conservation had threatened to or had seized any furs, skins or hides, or to

confiscate any in actual transit in interstate commerce. There are no allegations that any shipments had been made in interstate commerce, nor are there any allegations of threats to seize or confiscate shipments made in interstate commerce. Under the ruling in the case cited above, it would seem that the plaintiff in error has, at most, presented for determination by this court a mere moot question.

The plaintiff stated in brief, in effect, that there was no market for hides and furs in the State of Louisiana, as there were no manufacturers to whom they could sell in the State of Louisiana. This is quite similar to the question presented in Heisler *vs.* Thomas Colliery, decided by the Supreme Court of the United States on November 27, 1922, and known as the Anthracite Tax case. The court, in that case, stated:

> "The contention that the tax is a regulation of interstate commerce seems to be based somewhat upon the declaration of the Governor of the State of its effect upon commerce in other States, we are unable to discern, in the fact, any materiality or pertinence, nor in the fact that Pennsylvania has a monopoly of the coal."

Congress Has Recognized Right of State to Prohibit Shipment of Wild Life.

It was held by the Supreme Court of Louisiana (p. 40, record), in passing on Act 135 of 1920:

> "That such a statute does not violate the interstate commerce law is no longer an open question. If it were still a question in dispute, it would be definitely settled against such contention by the provisions of the Lacey Act. Sec. 242, 35 Statute at Large, p. 1137.". (See p. 40, record.) Citing: State *vs.*

Schwarts, 119 La., 294; Territory of New Mexico *ex rel.* McLean, 203 U. S., 38; 51 Law Ed., 78; Nielson *vs.* Garzo E. Woods, 287 Fed., —; Guano Co. *vs.* Bd. Agriculture, 171 U. S., 345; 43 Law Ed., 191.

Lacey Law (Act of Congress).

The Lacey law was passed on in a decision reported in 16 Okla., page 639, *et seq.*, entitled Cameron *vs.* Territory, and that decision is in accord with the ruling of the Supreme Court of Louisiana in case at bar. The Oklahoma case cited the Lacey law, then extant, volume 31, Statute at Large, pages 187-189, but as amended March 4, 1909, it is published in 35 Statute at Large, page 1137, and, in section 242, provides as follows:

> "SEC. 242. It shall be unlawful for any person to deliver to any common carrier for transportation, or for any common carrier to transport from any State, Territory, or District of the United States to any other State, Territory, or District thereof, any foreign animals or birds the importation of which is prohibited, or the dead bodies or parts thereof of any wild animals or birds, where such animals or birds have been killed *or shipped in violation of the laws of the State, Territory,* or District in which the same were killed, or from which they were shipped; *Provided,* That nothing herein shall prevent the transportation of any dead birds or animals killed during the season when the same may be lawfully captured, and the *export of which is not prohibited by law in the State,* Territory, or District in which the same are captured or killed; *Provided further,* That nothing herein shall prevent the importation, or sale of birds or bird plumage manufactured from the feathers of barnyard fowls." (Italics ours.)

Gist Second Assignment of Error.

(Page 9 of Plaintiff's Brief.)

> "That inasmuch as the plaintiffs in error, who are dealers in furs, have paid and are required to pay the same *ad valorem* taxes on their merchandise and stock on hand that other merchants pay both the City of New Orleans and State of Louisiana, and the same annual license taxes to the City and State which other merchants pay, that an additional tax of two per cent on plaintiff in errors' stock, and an additional license tax to the license charged other merchants clearly discriminates against plaintiffs in error and violates the Fourteenth Amendment by denying to plaintiffs in error the equal protection of the law."

In passing on this assignment of error, as appears on page 38 of the record, the Supreme Court of Louisiana held:

> "As the imposition of this charge is made under the police power of the State as a means of enforcement of its police regulation in reference to the conservation of its wild animal life, and not under the taxing power of the State, as ordained in the State Constitution, this objection must be considered from the aspect of the rights of the State in the exertion of its police power for the preservation of its natural resources.
>
> "The legitimate exercise of the police power is not subject to restraint by constitutional provisions for the general protection of the rights of individual life, liberty, and property. State *vs.* Schlemmer, 42 An., 1166; 10 L. R. A., 135. And the Fourteenth Amendment of the Constitution of the United States does

not interfere with the proper exercise of that power. 6 R. C. L., pars. 193, 194; L'Hote *vs.* New Orleans, 177 U. S., 596; 44 Ed., 903; State *vs.* McCormick, 142 La., 582."

In volume 12, Ruling Case Law, page 693, under title "Discrimination," the editorial note states clearly and supports by citation of decisions the jurisprudence as follows:

> "Though the Fourteenth Amendment to the United States Constitution forbids any State from making or enforcing any law which shall deny to any person within its jurisdiction the equal protection of law, all discrimination as to persons who shall kill game within its borders is not thereby forbidden. Owing to the fact that the wild game within the borders of a State belongs to the people of that State, it is lawful for the State to make regulations that will exclude non-residents from an equal enjoyment of such game. Thus, a State may require the procurement of licenses by all hunters and deny the privilege of obtaining such license to persons residing outside of the State. And, if the State sees fit to permit a non-resident to take game, it may impose a larger license fee; for the State, having the right absolutely to exclude non-residents from hunting within its borders, may admit them upon such conditions as it sees fit to impose."

However, as plaintiff in error has not cited in brief authorities to support the assignment under discussion, we presume the decision of the Supreme Court of Louisiana has been accepted as conclusive.

Third Error Assigned.

(See Page 9 of Plaintiffs' Brief.)

> "That the Act 135 of 1920 is unconstitutional in that it leaves to the Commission arbitrary powers of assessment, taxation, and regulation, because said act is solely one for revenue; because said act is not passed under the police power of the State, but for the purpose of collecting revenue. The only provisions applying to the conservation of game being the two clauses providing for a closed season, the remainder of the act being leveled at shipments of hides and furs from the State."

We wish, first, to direct the attention of the court to the petition of the plaintiffs (pp. 1 to 4, record), and add we are of opinion that your honors will conclude, after examination, the pleadings do not cite any constitutional provision nor point out wherein the provisions of the act conflict with the Constitution of Louisiana or the Constitution of the United States.

Further, the cases of Noble *vs.* Douglas and Yick Wo *vs.* Hopkins, cited by plaintiffs in error, are not in point. They differ from the case at bar materially. In the cases cited by counsel for plaintiffs the regulations pertain to a harmless business that was protected by both the Constitution of the United States and the Constitution of California. In the case at bar, the appellants are engaged in a business absolutely subject to the police power of the State. The distinction is well made between a harmless business and one that is injurious unless regulated, by Mr. Field in his able opinion in

Crowley *vs.* Christensen, reported in 137 U. S., p. 91; 34 L. Ed., p. 624, *et seq.*

Mr. Justice Field discussed the Chinese Laundry case of Yick Wo *vs.* Hopkins, relied upon by appellants herein, and distinguished the cases as follows:

> "It will thus be seen that case (Yick Wo *vs.* Hopkins) was essentially different from the one now under consideration, the ordinance there held invalid vesting uncontrolled discretion in the Board of Supervisors with reference to a business, harmless in itself, and useful to the community, and the discretion appearing to have been exercised for the express purpose of depriving the petitioner of a privilege that was extended to others. In the present case, the business is not one that any person is permitted to carry on without a license, but one that may be entirely prohibited or subject to such restriction as the governing authority of the city may prescribe."

In Crowley *vs.* Christensen, the question was whether arbitrary regulations could be imposed upon one engaged in the sale of intoxicating liquors, and the Supreme Court of the United States held that the character of the business justified such regulations or prohibitions as the city thought wise.

Summarizing, we will say, first, that the pleadings of the plaintiffs in this case have not raised any constitutional question to which the decisions in Yick Wo *vs.* Hopkins and Noble *vs.* Douglas apply; secondly, that if they have raised the constitutional question in their brief, the distinction made by Judge Field between the Chinese laundry business and that of the sale of intoxicating liquors would defeat the contention of the plaintiffs.

The act assailed is one to carry into effect the police power of the State, as is manifest from its provisions, and it was so held by the Supreme Court of Louisiana in case at bar. On page 36 of record will be found the ruling of the court, as follows:

> "Act 135 of 1920 is therefore a police regulation, whose object is to protect and conserve the animals designated therein for the common benefit * * *."

Further, on page 37 of the record:

> "As we have held in this opinion, Act 135 of the General Assembly is a police regulation, it necessarily follows that the severance tax imposed in said act is not a tax levied under the Constitution for revenue, but a charge imposed under the police power of the State for carrying out a police regulation."

In conclusion, we urge that the motion to dismiss the writ of error should prevail.

In the event this honorable court does not sustain the motion to dismiss, then we pray for an affirmance of the judgment of the Supreme Court of the State of Louisiana in favor of the Department of Conservation and against plaintiff in error.

Respectfully submitted,

A. V. COCO,
Attorney General of Louisiana.
PAUL A. SOMPAYRAC,
Assistant Attorney General of Louisiana.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 452. 65

PAUL V. LACOSTE, JOSEPH E. MARES, HENRY P. MIRANDONA ET AL., PLAINTIFFS IN ERROR,

versus

DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA

MOTION ON BEHALF OF DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA, DEFENDANT IN ERROR, TO DISMISS WRIT OF ERROR.

A. V. COCO,
Attorney General of the State of Louisiana.
PAUL A. SOMPAYRAC,
Assistant Attorney General of the State of Louisiana.

(29,003)

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 453.

PAUL V. LACOSTE, JOSEPH E. MARES, HENRY P. MIRANDONA ET AL., PLAINTIFFS IN ERROR,

versus

DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA

MOTION ON BEHALF OF DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA, DEFENDANT IN ERROR.

Now comes the defendant in error, and moves the Court to dismiss the writ of error in this case, for the reason that the questions on which the decision of the cause depends are so frivolous as not to need further argument; that no Federal question is involved herein, or if plaintiffs in error have presented a Federal question or questions, they are foreclosed by prior decisions of the Honorable Supreme Court of the United

States cited in the opinion of the Supreme Court of the State of Louisiana in this cause, printed in the record.

That it is manifest that the said writ of error, if not intentionally sued out merely for delay, can have no other effect.

A. V. COCO,
Attorney General of the State of Louisiana.

PAUL A. SOMPAYRAC,
Assistant Attorney General of the State of Louisiana.

Notice to Counsel.

Mr. Edwin T. Merrick, Attorney,
Mr. Ralph J. Schwarz, Attorney, and
Mr. Morris B. Redmann, Attorney:

Please take notice that on the — day of ——, 1922, the motion of which the foregoing is a copy will be submitted to the Supreme Court of the United States for the decision of the Court thereon. Annexed hereto is a copy of the brief or argument of the defendant in error in support of the motion adverted to above.

A. V. COCO,
Attorney General of the State of Louisiana.

—— ——,
Assistant Attorney General of the State of Louisiana.

New Orleans, La., — ——, 1922.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 453.

PAUL V. LACOSTE, JOSEPH E. MARES, HENRY P. MIRANDONA ET AL., PLAINTIFFS IN ERROR,

versus

DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA

BRIEF IN BEHALF OF DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA, DEFENDANT IN ERROR.

Statement of the Case.

Paul V. Lacoste and others, plaintiffs in error, sued out a writ of injunction from the Civil District Court, Orleans

Parish, Louisiana, enjoining the Department of Conservation of the State of Louisiana from seeking to collect, under provisions of Act 135 of the General Assembly of 1920, a "Severance Tax" of two cents on the dollar of the value of skins and hides purchased by them and taken from wild fur-bearing animals and alligators killed within the State on the alleged ground that the act is unconstitutional. The injunction also restrained the Department of Conservation from alleged threatened seizure and confiscation of hides and furs in possession of plaintiffs in error, acquired by them in the State of Louisiana as dealers in skins and hides.

The Attorney General of Louisiana appeared for the Department of Conservation, which is a constitutional body, and filed an exception to the petition of plaintiffs on the ground that it disclosed no cause nor right of action. After due hearing, the exception was sustained by the Court that issued the injunction, and from that judgment an appeal was taken by plaintiffs in error to the Supreme Court of Louisiana. The decision of the lower court was affirmed by the Supreme Court and an application for a rehearing was denied.

Mr. Justice Provosty dissented from the opinion of the Supreme Court of the State of Louisiana and granted plaintiffs a writ of error to the Supreme Court of the United States.

ARGUMENT.

The opinion of the Supreme Court of Louisiana, affirming the judgment of the Civil District Court, was rendered by Mr. Justice Land. It contains a lucid statement of the allegations of plaintiffs, as well as sound reasons supporting the

decree, based on numerous decisions of the Honorable Supreme Court of the United States. As Justice Land's opinion is copied in the record, we beg leave to reproduce it herein as a full statement of the case and brief of argument to support the motion to dismiss or affirm.

His Honor, Mr. Justice Land, pronounced the opinion and judgment of the court in the following case:

SUPREME COURT OF LOUISIANA, EN BANC.

APRIL 22, 1922.

No. 25,061.

PAUL V. LACOSTE *et als.*

vs.

DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA.

Appeal from the Civil District Court, Parish of Orleans.

Hon. WYNNE G. ROGERS, *Judge.*

Mr. Justice LAND:

Petitioners, resident and non-resident, are engaged in this State, and especially in the City of New Orleans, in the business of buying and selling, importing, exporting, and dealing in hides, skins, and furs, some of which were originally taken from wild fur bearing animals and alligators in this State.

They complain that the Department of Conservation of the State of Louisiana is illegally seeking to collect from them, under the provisions of Act 135 of the General Assembly of 1920, a "severance tax" of two cents on the dollar on the value of skins and hides purchased by them and taken from wild fur bearing animals and alligators within the State, for the reason that said act is unconstitutional.

Petitioners, therefore, declined to pay said "severance tax," and, alleging the unconstitutionality of said act, obtained an injunction from the Civil District Court of the Parish of Orleans, restraining the Department of Conservation from threatened seizure and confiscation of all shipments of hides and furs made or to be made by any of petitioners.

This injunction was dissolved and plaintiffs' suit dismissed on exception of no cause nor right of action, which was maintained by the lower court.

Plaintiffs have appealed from the judgment against them, and attack the constitutionality of Act 135 of the General Assembly of 1920 on the following grounds:

> "(1) That said act of the legislature is violative of article 31 of the State Constitution of 1913, in that the title of said act does not embrace nor express the object in regard to limiting the privileges of trapping fur bearing animals or alligators in this State to such persons only as shall have been *bona fide* residents of this State for at least the preceding six months, as set out in section 5 of the act."

In the title of the act we find: "to allow licensed trappers to hunt wild game without additional license;" "to define trappers, fur dealers, fur buyers, resident and non-resident;" "defining the time and making an open season for the trapping of all fur bearing animals and the taking and killing of alligators in this State."

Section 1 of said act defines a trapper as follows: "A trapper shall be considered to be a person who takes the animal in its wild state and removes the skin therefrom for sale." Section 5 of said act provides: "That only such persons that shall have been *bona fide* residents of this State for at least the preceding six months shall be permitted to trap fur bearing animals or alligators in this State, or shall be permitted to receive license therefor." Section 4 of said act also provides: "That there be and are hereby levied the following

licenses on each trapper * * * to-wit: Any trapper herein defined possessing a state wide hunting license, costing one (1) dollar, shall be permitted to trap under this law." In other words, a trapper in this State is "defined" to be, not merely the person who takes the animal in its wild state and removes the skin therefrom for sale, but he must also be a resident for at least the preceding six months before he is licensed, and must possess a hunting license. The provisions of these sections are clearly within the title of the act, as the legal qualifications for a trapper are necessarily included in and form a part of the definition.

Petitioners also complain that the title of said act fails to show that a distinction is made between resident and non-resident dealers, in regard to the amount of license tax to be paid.

We find in the title of the act these words: "levying an annual license tax on persons, firms, corporations or associations of persons engaged in the buying of hides and skins taken from wild fur bearing animals and alligators, and prohibiting the conduct of such business without such license." We find also in the title of said act the following words: "to define trappers, fur dealers, fur buyers, resident and non-resident." These provisions in the title clearly indicate, and give notice to persons reading the title of said act, that "non-resident" fur buyers and fur dealers are embraced within its scope, and that all such dealers are subject to the payment of such licenses. The levying of a different license on non-resident fur dealers and fur buyers in section 4 of said act is a mere classification, a mere detail which it was not necessary to embrace in the title of the act, as such detail is germane and incidental to the avowed purpose of said act, as expressed in its title, to levy licenses upon all fur dealers and fur buyers, resident or non-resident. In respect to the levying of licenses, we find nothing in the title of said act that is misleading, surprising, or confusing to persons reading it.

The title of a law is not to be strictly or technically interpreted; if it states the object, according to the understanding of reasonable men, it satisfies the constitution. State *vs.* Boylston, 138 La., 28; Munic. No. 3 *vs.* Michaud, 6 An., 605. "(2) The said act of the Legislature embraces more than one object."

Plaintiffs' counsel indicated in their brief the following as the different objects set forth in the body of the act: "One of the objects of the act, as shown by sections 8 and 9 thereof, is the conservation of wild fur bearing animals and alligators by providing for open and closed season for hunting and trapping them."

"Another object of the act is to regulate the business of fur dealers, the shipment of furs out of the State, and to impose upon the dealers a fixed license tax in addition to the regular annual license tax."

"A third separate and distinct object of the act is provided for in section 3 thereof, which provides for an *ad valorem* tax of two cents on the dollar on the value of all skins or hides taken from any wild fur bearing animals or alligators within this State, which severance tax shall be paid by the dealer, etc."

Plaintiffs' counsel state in their brief that "not only are these objects set forth in the body of the act, but they are also expressed in the title."

It is evident from these and other subdivisions in the title of Act 135 of the General Assembly of 1920, that its object is to conserve for the common benefit of the people of the State the property rights in all fur bearing animals and alligators in this State, including the valuable asset of the skins and hides of these animals, which naturally constitute a part of the common wealth of the State.

The right to preserve game and animals valuable for their skins and hides flows from an undoubted existence in the state of a police power to that end. This authority of a State is derived from the common ownership of the game and of

such animals and the trust for the benefit of its people which a State exercises in relation thereto. Under said act, the wild life of the State is made the property of the State; it is a part of the State's natural resources, which the State may, in the exercise of its police powers, enact regulations to preserve and conserve. Goer *vs.* Connecticut, 161 U. S., 519; Pastono *vs.* Pennsylvania, 222 U. S., 138; McCready *vs.* Virginia, 94 U. S., 391. 533

Act 135 of the General Assembly of 1920 is therefore a police regulation, whose object is to protect and conserve the animals designated therein for the common benefit, and the various subdivisions of the title of said act, pertaining to the "levying of a severance tax;" "fixing the time when, by whom, and under what conditions such severance tax shall be paid;" "prohibiting persons, and firms, and corporations from shipping or selling hides or skins unless said severance tax is paid;" "requiring persons dealing in hides or skins to keep records of all receipts and sales of said hides and skins and to make reports of same to the Department of Conservation;" "defining trappers, fur dealers, fur buyers, resident and non-resident;" "imposing annual license taxes, etc.," all are branches of the object of the act, germane and incidental thereto, and the means of accomplishing the purpose of said act, and do not in themselves constitute different objects foreign to that embraced in the title of said act. These various subdivisions of the title relate to the conservation and protection of the animals designated in the act, and provide through the imposition of a "severance tax" the means of enforcement of the act, or police regulation enacted for that purpose. They also relate to the collection and protection of the fund derived from the "severance tax," without which the enforcement of said act or police regulation would not be possible.

The constitutional requirement that a statute shall embrace only one object does not mean that each and every means necessary to accomplish an object in the law must be

provided for by a separate act relating to it alone. A statute that deals with several branches of one subject does not thereby violate the constitutional requirement that the act must have only one object. State *vs.* Daremus, 137 La., 266; City of Shreveport *vs.* Nejim, 140 La., 786.

An act whose title states one object and a number of other things germane to this object and connected therewith, is not a violation of article 31 of the Constitution, requiring that the title of the act state only one object. Thomas *vs.* Board of School Directors, 136 La., 504; State *vs.* J. Foto & Bro., 134 La., 152; State *vs.* Mauvezin, 136 La., 749.

Counsel for plaintiffs also contend in their brief that there is nothing in the title of the act to indicate any criminal liability for the violation of any of its provisions, and that, therefore, section 10 of said act declaring that the violation of any provision of said act shall constitute a misdemeanor, punishable by a fine or imprisonment, etc., is a provision in the body of the act, of which no indication is given in the title.

In this statement counsel for plaintiffs in error, as the title of said act concludes with the words: "to provide penalties for violation of this act and to repeal all conflicting laws."

> "(3) The said act is violative of the Constitution of the State of Louisiana, in that the title of said act expresses the purpose of the act to be 'the levying of a severance tax,' whereas section 3 of said act, while using the words 'severance tax,' in fact does not levy the tax on the severing of or on the persons who sever the skins or hides, but purport to levy a 'severance tax' on the dealers in such hides and skins."

> "(4) The said act is in violation of the State Constitution in that the license tax therein provided for is not equal and uniform."

We will consider objections 3 and 4 together.

Article 255 of the Constitution requiring equal and uniform taxation refers, in terms, to taxation on property and has no application to the taxation on occupations. State *vs.* Underwood, 139 La., 298.

As we have held in this opinion that Act 135 of the General Assembly of 1920 is a police regulation, it necessarily follows that the severance tax imposed in said act is not a tax levied under the Constitution for revenue, but a charge imposed under the police power of the state for carrying out a police regulation. Board *vs.* Richart *et al.*, 139 La., 298; De Gruy *vs.* La. State Board of Pharmacy, 141 La., 896. Such severance tax or charge is, therefore, not subject to the provisions of article 229 of the Constitution of 1915.

It is to be observed on passant that said article provides that the amount of severance tax to be collected of those engaged in the business of severing natural resources, such as timber and minerals, from the soil or water, may be either graduated or fixed according to the quantity or value of the product at the place where it is severed.

The title of Act 135, of the year 1920, declares the wild fur bearing animals and alligators of this State to be the property of the State and the skins taken from such animals to be the property of the State, until there shall have been paid to the State of Louisiana the severance tax levied thereon by the provisions of this act. The title of this act does not indicate that this severance tax shall be levied on the party severing, or on the persons who [illegible]ever the skins or hides. It merely declares that the [illegible]hall "fix the time when, by whom, and under what conditions such severance tax shall be paid."

As the title and the provisions of the act plainly declare that these animals and their skins are the property of the State and shall so remain until the severance tax is paid, it is clear that the tax or charge is levied, and its payment is made a condition precedent to the divestiture of the sover-

eign's title and its transfer to the person, firm, or corporation paying the tax or charge.

These provisions clearly indicate that the charge of two per cent imposed in said act was not levied as a severance tax under article 229 of the Constitution of the State, but solely as a charge or duty under the authority of the police power of the State, to put into operation and to enforce its police regulation.

It follows, therefore, that it was not necessary that the assessment of this charge should conform to the provisions of the Constitution of 1913, nor that it should be imposed upon the class of persons or at the time therein designated. These were matters which the State, in the exertion of its police power, had the right primarily to determine, in parting with the ownership of its property in these animals and their skins and hides. In imposing this charge, the State was compelled to act upon sound business principles, and to levy the same upon the dealers in furs and skins, as such dealers are known, have established places of business, make inventories of their stocks, and are easily accessible for the purpose of collection of said charge. To levy such a charge upon an itinerant trapper at the time of severing the skin or hide, with no fixed place of abode or business, and with no inventory of stock, would deprive the State and its Department of Conservation of any efficient means of ascertaining the number or value of the skins or hides, and of collecting the charge. The result would be the crippling of the activities of the Department of Conservation of the State through lack of funds, and the indiscriminate slaughter of its animals, to say nothing of the consequent loss of the value of their skins and hides. The very object of Act 135 of 1920, the conservation of the natural resources of the State, would be defeated to a great extent, and to the detriment of the citizens of the State at large, for whose common benefit these animals and their skins and hides are protected by the State under its police power.

The imposition of such charge upon the dealer in fur and hides was not, therefore, an arbitrary and unreasonable exercise by the State of its police power, nor an unwarranted and discriminatory interference with the lawful business of such dealers, but it was demanded by the exigencies of the case, and by the necessity for protecting, in a practical and efficient manner, the revenue or fund upon which the enforcement of the police regulation of the State depends.

> "(5) The said act is violative of the Constitution of the United States and particularly of the Fourteenth Amendment thereof, in that it denies to persons within the State's jurisdiction the equal protection of the laws; the object of the act being to relieve the trapper of any tax and to place the burden on the dealer, contrary to the policy of the State taxation in every other instance of 'severance tax.'"

As the imposition of this charge is made under the police power of the State as a means of enforcement of its police regulation in reference to the conservation of its wild animal life, and not under the taxing power of the State, as ordained in the State Constitution, this objection must be considered from the aspect of the rights of the State in the exertion of its police power for the preservation of its natural resources.

The legitimate exercise of the police power is not subject to restraint by constitutional provisions for the general protection of the rights of individual life, liberty, and property. State *vs.* Schlemmer, 42 An., 1166; 10 L. R. A., 135. And the Fourteenth Amendment of the Constitution of the United States does not interfere with the proper exercise of that power. 6 R. C. L., Pars. 193, 194; L'Hote *vs.* New Orleans, 177 U. S., 596; 44 Ed., 903; State *vs.* McCormick, 142 La., 582.

Though the Fourteenth Amendment to the United States

Constitution forbids any State from making or enforcing any law which shall deny to any person within its jurisdiction the equal protection of the law, all discrimination as to persons who shall kill game within its borders is not thereby forbidden. Owing to the fact that the wild game within the borders of the State belong to the people of the State, and not to private individuals, it is lawful for the State, as the sovereign holding in trust such common property for the common benefit, to make regulations which shall exclude non-residents from an equal enjoyment of such game. Thus a State may require the procurement of licenses by all hunters and deny the privilege of obtaining such licenses to persons residing outside the State. And if the State sees fit to permit a non-resident to take game, it may impose a larger license fee; for the State having the right absolutely to exclude non-residents from hunting within its borders, may admit them upon such conditions as it sees fit to impose. 12 R. C. L., p. 693 (10); Geer *vs.* Connecticut, 161 U. S., 519; 40 L. Ed., 793; State *vs.* Schwartz, 119 La., 294.

Under Act 135 of 1920 the skins and hides of wild fur bearing animals and of alligators, as well as these animals themselves, are declared to be the property of the State, the common property of the people held in trust by the sovereign for their common benefit, and to be conserved and protected in the discharge of the duties of this trust under the ægis of the police power of the sovereign. The whole scheme for the accomplishment of this purpose is declared by this act to rest upon this and no other basis. It follows, therefore, that there can be no reasonable distinction drawn between the common ownership of the animals and the ownership of their skins and hides by the people of the State, for both are property of the same origin and legal status, *i. e.*, common and not private property, to be conserved and to be disposed of under the police power of the State.

The non-resident appellants as dealers in skins and hides within the State are therefore engaged in a business which

is peculiarly subject to control by the police power of the State, owing to the unusual species and status of the property in which they deal. The right of non-residents to buy and ship the skins and hides of wild fur bearing animals of the State is, therefore, not an absolute right but a mere privilege which the State may grant or withhold and for the exercise of which it may exact a charge. The case at bar, therefore, differs essentially from arbitrary classification or discrimination made by the State Legislature against persons of the same class engaged in harmless and lawful occupations affecting the private property which may compose the internal commerce of a State. The line of demarcation being thus clearly fixed, the case at bar must be differentiated by this court from the cases of Noble *vs.* Douglas, 274 Fed., 672, and Yick Wo *vs.* Hopkins, 118 U. S., 356, upon which plaintiff's counsel confidently rely, as was properly done by Mr. Justice Fields in the case of Crowley *vs.* Christensen, reported in 137 U. S., p. 91; 34 L. Ed., p. 624 *et seq.*

> "(6) Act 135 of 1920, in levying a tax on exports from the State, is violative of the Interstate Commerce clause of the Federal Constitution."

That such a statute does not violate the Interstate Commerce law is no longer an open question. If it were still a question in dispute, it would be definitively settled against such contention by the provisions of the Lacey Act. Sec. 242, 35 Statute at Large, p. 1137. Geer *vs.* Connecticut, 161 U. S., 793; State *vs.* Schwartz, 119 La., 294; Territory of New Mexico *ex Rel.* E. J. McLean and Co. *vs.* Denver and Rio Grande Railroad Company, 203 U. S., 38; 51 L. Ed., 78; Neilson *vs.* Garza E. Woods, 287 Fed. Cases, No. 10,091; Patapsco Guano Co. *vs.* Board of Agriculture, 171 U. S., 345; 43 L. Ed., 191.

> "(7) Whether we consider Act 135 of 1920 as a police regulation or a revenue law enacted under

either the police or taxing powers of the State, we respectfully submit that it vests a political board with arbitrary power to make regulations that may be very oppressive to legitimate business, and delegates to such board the taxing power of the Legislature."

An inspection of section 3 of Act 133 of 1920, discloses the fact that the so-called severance tax is fixed by said section at two (2) cents on the dollar on the value of all skins or hides taken from any wild fur bearing animal or alligators in this State. Said act does not, therefore, delegate to the Department of Conservation of the State, the taxing power of the Legislature, which has itself fixed in said section with exactness the rate of said so called tax. The quantum of said severance tax is not then left to the arbitrary discretion or determination of said department, which is without authority under said section to either increase or diminish the rate established by the statute.

The authority with which said department is clothed by the provisions of said section is "to ascertain the actual price of skins and hides paid by the dealer subject to pay the tax, and to determine the time when, and the manner in which said severance tax shall be paid, and to adopt rules and regulations, *not contrary to the provisions of this act*, to carry the provisions of this act into effect *in relation to the collection* of said severance tax and the licenses herein imposed." (Italics ours.) Then follows in the next line the provision: "It shall be a violation of this act for any person, firm, corporation or association, to ship or carry from this State any skin or hide of any fur bearing animal or alligators on which the severance tax is due, without the said severance tax on said skin or hide first being paid to the State of Louisiana."

Section 6 of said act requires all buyers and dealers in hides and skins to keep a complete record and to make monthly reports of all purchases and sales, and provides that the records, books and memoranda of said buyers and dealers

shall be open to the inspection of the agents of the Department of Conservation. In other words, the duties imposed upon said department are not legislative, but are of an executive character. They relate to the collection of the severance tax, the ascertainment of the amount due, and to the adoption, incidentally, and enforcement of rules and regulations, "not contrary to the provisions of this act, to carry into effect such provisions in relation to the collection of the tax."

We fail to find in the delegation by the Legislature to said Department of such necessary and reasonable authority, any arbitrary power conferred to oppress legitimate business.

However, we are dealing in the case at bar, not with the delegation of the power of taxation by the Legislature, but with the delegation of police power by the State to its Department of Conservation, a political agency especially created by the sovereign, and given exclusive authority to collect and conserve the fund to be derived for the purpose of putting into efficient operation the Conservation Act of the State for the preservation of its natural resources.

In "The Fourteenth Amendment" by Brancon it is said: "The great police power resides in the State; but it is impossible that the State should itself be present in every instance to enforce police regulations, or that it should provide for the multitudinous instances of its exercise by legislative acts. The whole time of the Legislature would be thus consumed; its acts would be endless; the thing would be utterly impracticable. Hence the necessity of the delegation of some of this power to cities, and other municipal corporations, and to counties, districts or townships." p. 211.

The necessity of the delegation of a part of the police power of the State to its Department of Conservation is likewise evident, in the enforcement of police regulations affecting the conservation of its natural resources.

For the reasons assigned, the judgment appealed from is affirmed at the cost of the appellants.

PROVOSTY, *C. J.*, dissents.

O'NIELL, *J.*, concurs in the result.

The foregoing opinion shows that provisions of Act 135 of the General Assembly of 1920, which statute plaintiffs in error attacked on the ground of alleged unconstitutionality, are reasonable and within the police power of the State of Louisiana, also in accord with the Lacey Act, adopted by Congress.

(See Section 242, 35 Statutes at Large, page 1137.)

We quote the following from the opinion handed down by Mr. Justice Land, showing that the Supreme Court of Louisiana has construed the statute attacked as a police regulation:

> "As we have held in this opinion that Act 135 of the General Assembly of 1920 is a police regulation, it necessarily follows that the 'Severance Tax' imposed in said act is not a tax levied under the Constitution for revenue, but a charge imposed under the police power of the State for carrying out the police regulation." (Record, p. 37.)

Further:

> "The title of Act 135 of the year 1920, declares the wild fur-bearing animals to be the property of the State until there shall be paid to the State of Louisiana a 'Severance Tax' levied thereon by the provisions of this act." (Record, p. 37.)

The Supreme Court of Louisiana also held that no arbitrary power was vested in the Department of Conservation obnoxious to or in contravention of the Constitution of the United States, citing the opinion by Mr. Justice Field in the case of Crowley *vs.* Christensen, 137 U. S., page 91; 34 L. Ed., page 624 *et seq.* Mr. Justice Field differentiated the regulation of a business within the police power of a State

from lawful occupations, harmless in their nature, which a person may pursue without limitations or interference.

With manifest intent to recognize that the protection of game and other wild life is in control of the police power of the several States, and to segregate beyond cavil game and other wild life, as well as their plumage, skins of wild animals, etc., from articles of interstate commerce, Congress adopted the Lacey Act, cited above.

Passing on the Lacey Act, in the case of Cameron *vs.* Territory, reported in 16 Okla., page 639 *et seq.*, the court held that a statute of that Territory prohibiting transportation or carriage of any birds or animals mentioned therein was adopted pursuant to the police power. It was also held that the Lacey Act, reported in vol. 31, Statutes at Large of the United States, pages 187-189, was a complete answer to the contention of the plaintiffs in error that the plumage, skins, etc., of birds and wild life were articles of commerce, and also refuted the contention that the transportation or carriage of same is not subject to regulation by the several States.

In conclusion, it is respectfully urged that the motion to dismiss should be sustained or, in the alternative, the decree of the Supreme Court of Louisiana should be affirmed.

Respectfully submitted,

A. V. COCO,
Attorney General of the
State of Louisiana.

PAUL A. SOMPAYRAC,
Assistant Attorney General of the
State of Louisiana.

(7494)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [illegible]

No. 159 65

PAUL V. LACOSTE, JOSEPH E. MARES, HENRY C. MIRANDONA, ET AL.,

Plaintiffs in Error,

versus

DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA,

Defendant in Error.

ORIGINAL BRIEF FOR PLAINTIFFS IN ERROR [illegible] TO [illegible] WRIT.

[illegible]
[illegible]
[illegible]
[illegible]

[illegible]

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922.

No. 453

PAUL V. LACOSTE, JOSEPH E. MARES, HENRY P. MIRANDONA, ET AL.,

Plaintiffs in Error,

versus

DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA

Defendant in Error.

ORIGINAL BRIEF FOR PLAINTIFFS IN ERROR AGAINST MOTION TO DISMISS WRIT.

STATEMENT OF THE CASE.

We are pleased that the Department of Conservation of Louisiana has seen fit to move to dismiss this case for the alleged reason that no Federal question has been presented and passed upon by the Supreme Court of Louisiana.

To sustain this he refers to the opinion of the Supreme Court of Louisiana alone, which fully shows that various

Federal questions were passed on by that Court and decided adversely to the contentions of the plaintiffs in error.

The Legislature in 1920 passed an Act which reads as follows:

ACT 135.

AN ACT.

Declaring the wild furbearing animals and alligators of this State to be the property of the State, and the skins taken from such animals to be the property of the State until there shall have been paid to the State of Louisiana, through the Department of Conservation, the severance tax levied thereon by the provisions of this Act; levying an annual license tax on persons, firms, corporations or associations of persons engaged in the buying of hides and skins taken from wild furbearing animals and alligators, and prohibiting the conduct of such business without such license; levying a severance tax of two (2c) cents on the dollar of and on the value of hides and skins taken from the wild furbearing animals and alligators of this State; fixing the time when, by whom, and under what conditions such severance tax shall be paid; defining the time and making an open season for the trapping of all furbearing animals and the taking and killing of alligators in this State; to allow licensed trappers to hunt wild game without additional license; to prohibit persons, firms, corporations, or associations from shipping or selling hides or skins taken from wild furbearing animals or alligators of this State unless said severance tax is

paid thereon; requiring all persons dealing in hides and skins taken from wild furbearing animals and alligators of this State to keep a record of all receipts and sales of said hides and skins and to make reports of same to the Department of Conservation; to define trappers, fur dealers, fur buyers, resident and nonresident; to authorize the Department of Conservation to adopt rules and regulations providing for the collection of the severance tax and licenses herein imposed and regulating the handling and disposition of all hides and skins of furbearing animals and alligators; to provide penalties for the violation of this act and to repeal all conflicting laws.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That the following definitions are hereby adopted for the application and enforcement of the provisions of this Act, to-wit:

A trapper shall be considered to be a person who takes the animal in its wild state and removes the skin therefrom for sale.

A buyer of hides and skins is one who buys direct from the trapper, with the intention to sell to another in this State, and who sells to another in this State, or who acts as an agent of another in this State in such purchase.

A dealer in hides and skins is one who either buys from a trapper and ships or exports from this State the skins and hides so bought, or buys from a buyer and exports from this State the skins and hides so bought, or buys from either a trapper or buyer and sells such skins and hides for manufacture into a finished product in this State. Dealers are hereby

divided into two classes, namely, resident and non-resident. Resident dealers are those who have for a period of six months previous to their application for license, been bona fide residents of this State. All others are non-resident dealers. Any person who ships or carries skins and hides of furbearing animals or alligators out of this State shall be considered to be a dealer.

Section 2. Be it further enacted, etc., That all the wild furbearing animals and alligators in this State and the skins taken from such animals are hereby declared for the purpose of the collection of the severance tax to be and to continue to be the property of this State until the severance tax levied thereon shall have been paid to the State, through the Department of Conservation.

Section 3. Be it further enacted, etc., That there be and is hereby levied a severance tax of two (2c) cents on the dollar on and of the value of all skins or hides taken from any wild furbearing animals or alligators within this State, which severance tax shall be paid by the dealer hereinabove defined, to the State through the Department of Conservation, under such rules and regulations as shall be determined by the Department of Conservation, which Department is hereby authorized and empowered to ascertain the actual purchase price of skins and hides paid by the dealer subject to pay the tax and to determine the time when, and the manner in which, such severance tax shall be paid, and to adopt and enforce rules and regulations, not contrary to the provisions of this Act into effect in relation to the collection of such severance tax and the licenses herein imposed. It shall be a violation of this act for any person, firm, corporation, or as-

sociation, to ship or carry from this State any skin or hide of any furbearing animal or alligator on which the severance tax is due, without the said severance tax on said skin or hide first being paid to the State of Louisiana.

Section 4. Be it further enacted, etc., That there be and are hereby levied the following licenses on each trapper, buyer and dealer under this law, to-wit:

Any trapper herein defined possessing a State-wide hunting license, costing one ($1.00) dollar, shall be permitted to trap under this law.

Any buyer herein defined, before commencing business, must procure annually from the Department of Conservation a buyer's license, which shall be furnished upon the payment of the sum of five ($5.00) dollars, and the filing of such form of application as may be determined by the Department of Conservation.

Any resident dealer herein defined, before commencing business, must procure annually from the Department of Conservation, a dealer's license, which shall be furnished upon the payment of the sum of twenty-five ($25.00) dollars, and the filing of such form of application as may be determined by the Department of Conservation.

Any non-resident dealer herein defined, before commencing business, must procure annually from the Department of Conservation a non-resident dealer's license which shall be furnished upon the payment of the sum of fifty ($50.00) dollars, and the filing of such form of application as may be determined by the Department of Conservation.

It shall be a violation of this act for any trapper, buyer, or dealer to undertake to prosecute their

several vocations without having previously procured and paid for the respective licenses hereinabove imposed on them.

Section 5. Be it further enacted, etc., That only such persons as shall have been bona fide residents of this State for at least the preceding six months shall be permitted to trap furbearing animals or alligators in this State, or shall be permitted to receive license therefor.

Section 6. Be it further enacted, etc., That it shall be the duty of all buyers and dealers in hides and skins of furbearing animals and alligators within the State of Louisiana to keep a complete record of all purchases and sales made by them showing the number and kind of hides and skins bought and sold, from whom, the date of said purchase, and the amount paid for each purchase, and when each purchase was made, and to make a monthly report, or otherwise, to the Department of Conservation, giving all information to said Department that it may require under its rules and regulations. All records, books and memoranda, etc., of said buyers and dealers shall be open at all times to the inspection of the duly authorized agents of the Department of Conservation. Any trapper may be required by the Department of Conservation to furnish it any information needed to check the records of buyers and dealers.

Section 7. Be it further enacted, etc., That all moneys payable under the provisions of this act shall be paid to and collected by the Department of Conservation under such rules and regulations as said Department may require; and all moneys so paid shall go to the credit of the Department of Conservation in the State Treasury as is now done with the other funds of said Department.

Section 8. Be it further enacted, etc., That an open season, extending from November first to January thirty-first, of each year, both dates included, is hereby fixed during which it shall be lawful to trap furbearing animals within this State. It shall be unlawful to trap, or attempt to trap, any furbearing animals or to set any trap for the purpose of trapping any furbearing animal within this State between the first day of February and the thirty-first day of October, both dates included, in any year.

Section 9. Be it further enacted, etc., That an open season extending from the sixteenth day of August to the thirtieth day of April, both dates included, in any year, is hereby fixed during which it shall be lawful to take or kill alligators within this State. It shall be unlawful to take or kill, or attempt to take or kill, any alligator in this State between the first day of May and the fifteenth day of August, both dates included, in any year.

Section 10. Be it further enacted, etc., That any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof by any Court of competent jurisdiction shall be fined not less than ten ($10.00) dollars nor more than one hundred ($100.00) dollars, or be subject to imprisonment for not more than thirty (30) days, or be liable to both fine and imprisonment at the discretion of the Court. In the case of a violation of this act by any corporation the executive officer of such corporation shall be the one subject to fine and imprisonment as representative of such corporation under the provisions of this act.

Section 11. Be it further enacted, etc., That all laws or parts of laws conflicting with the provisions of this Act be and the same are hereby repealed.

R. F. WALKER,
Speaker of the House of Representatives,
HEWITT BOUANCHAUD,
Lieutenant Governor and President of the Senate.

Approved July 7, 1920:

JNO. M. PARKER,
Governor of the State of Louisiana.

A true copy:
JAMES J. BAILEY,
Secretary of State.

ASSIGNMENT OF ERRORS.

The errors assigned are briefly stated as follows:

First.

That Act 135 of 1920 levies a tax on interstate commerce, and was passed for that purpose, because although it is called a severance tax, it is levied solely against dealers in hides shipping the cured hides out of the State, and only taxes such dealers.

That this taxation is insured by prohibiting the plaintiffs in error from shipping cured hides and skins out of the State unless in accordance with the rules of the Department of Conservation certain tags and labels are attached,

and said tax regulations are regulations of interstate commerce, and the two per cent *ad valorem* tax exacted on shipping such articles of commerce out of the State is violative of the interstate commerce clause.

Second.

That inasmuch as the plaintiffs in error, who are dealers in furs, have paid and are required to pay the same *ad valorem* taxes on their merchandise and stock on hand that other merchants pay both the City of New Orleans and State of Louisiana, and the same annual license taxes to the City and State which other merchants pay, that an additionl tax of two per cent on plaintiff in error's stock, and an additional license tax to the license charged other merchants clearly discriminates against plaintiffs in error and violates the Fourteenth Amendment by denying to plaintiffs in error the equal protection of the law.

Third.

That the Act 135 of 1920 is unconstitutional in that it leaves to the commission arbitrary powers of assessment, taxation and regulation, because said act is solely one for revenue; because said act is not passed under the police power of the State, but for the purpose of collecting revenue. The only provisions applying to the conservation of game being the two clauses providing for a closed season, the remainder of the act being leveled at shipments of hides and furs from the State.

ARGUMENT.

FEDERAL QUESTIONS HERE PRESENTED, AND NECESSARILY DECIDED, HAVE NOT BEEN FORECLOSED BY PRIOR DECISIONS.

The plaintiffs in error sued out an injunction forbidding interference with shipments from the State of furs and hides bought by them in Louisiana and adjoining States, alleging that Act 135 of the General Assembly of 1920 is violative of the Constitution of the United States, and particularly of the Fourteenth Amendment thereof, in that it denies to persons within the State's jurisdiction the equal protection of the laws—the object of the act being to relieve the trapper of any tax, and to place the burden on the dealer, contrary to the policy of the State taxation in every other instance of "severance tax", and that said act is violative of the Constitution of the United States, and particularly of Article 4, Section 2, thereof, in that it denies to citizens of other States privileges and immunities granted and permitted to citizens of this State.

It was also urged in the lower and in the Supreme Court that these taxes were an unjust additional tax on merchandise bought by plaintiffs in error, and an unjust additional license tax on business done by plaintiffs in error, who already were taxed with license and *ad valorem* taxes paid by other taxpayers, discriminating against them in violation of the Fourteenth Amendment.

That the Act 135 of 1920 was unconstitutional, in that it leaves the commissioner arbitrary powers of assess-

ment, taxation and regulation and was passed not in furtherance of the police power, but solely for revenue.

That the taxes levied were taxes on interstate commerce by prohibiting shipments from the State of cured hides and skins without obtaining a license and the affixing to the shipment certain tags and labels, which tags and labels could not be procured without the payment of the license and the subsequent payment of the other taxes illegally exacted by the commission.

The respondent filed an exception of no cause of action (equivalent to a general demurrer at common law), which was sustained by the State Supreme Court, holding specifically that statute conflicts with neither the interstate commerce clause nor the Fourteenth Amendment of the Federal Constitution. A writ of error to the Supreme Court of Louisiana was granted and perfected, and the cause is now before Your Honors on a motion of defendants in error to dismiss or affirm.

It was also urged that the act was unconstitutional because it was levied as a "severance tax", and the Constitution of the State provided that severance taxes should be collected as the property is severed from the soil:

> "Those engaged in severing natural resources, such as timber and minerals, from the soil or water, whether they thereafter **convert them by manufacturing or not,** may also be rendered liable to a license tax, but in this case the **amount to be collected may**

> **either** be graduated or fixed **according to the quantity or value of the product at the place where it is severed."**
>
> *Constitution of Louisiana, Article 229.*

And the act 135 of 1920 provides that the Department of Conservation

> "is hereby authorized and empowered to ascertain the actual purchase price of skins and hides paid by the dealer subject to pay the tax, and to determine the **time when** and the **manner in which** such severance tax shall be paid, and to adopt rules and regulations"

to carry said act into effect. That

> "It shall be a violation of this act for any firm, corporation or association to ship or carry from this State any skin or hide of any fur-bearing animal or alligator, on which the severance tax is due, without said severance tax on said skin or hide has been first paid to the State of Louisiana."

All these questions were specifically passed upon by the Supreme Court of Louisiana adversely to the contention of plaintiffs in error in its opinion, which the Department of Conservation has annexed and filed with its motion to dismiss or affirm.

It will, therefore, be impossible under the repeated decisions of this Court to dismiss our writ of error.

From the time of *Mallett v. North Carolina, 181 U. S., 589*, it has been held that where the Federal question is

raised and passed upon, even on rehearing, it will be considered by this Court.

In the present suit, although the Court passed on the Federal questions in its opinion, we again urged them in an application for a new trial. 41, 42, 43.

There can be no question, therefore, of the Federal questions having been raised and passed upon.

Leigh v. Green, 193 U. S., 85.
I. C. R. R. Co. v. Kentucky, 218 U. S., 556.

The plaintiffs in error are known, under Act 135 of 1920, as dealers. They buy furs and hides just as one buys cotton to send North to be manufactured into wearing apparel. Or just as our enterprising young men buy mussel shells and ship North to be made into pearl buttons.

They already pay to the State and City the same license other merchants pay.

They already pay the State and City the same *ad valorem* tax that other merchants pay. Now, Act 135 exacts further that these fur and hide merchants must pay an additional license of two per cent on everything they buy for export or interstate commerce. They can sell to one another in the State, but when they **ship out of the State they must pay the tax of two per cent on whatever they spent** for their merchandise, and an **additional license** to the regular license exacted from other merchants in Louisiana.

This is not a question of the dominion of the State over wild animals for a number of reasons.

First. The skins and hides are articles of commerce; the animals have been killed and consumed, and the skins and hides prepared for commerce.

Second. Act 135 of 1920 contemplates that these cured skins and hides shall be articles of commerce to be bought and sold in Louisiana without the payment of duty, unless sold to a manufacturer, and there are no manufacturers of furs or alligator products in Louisiana.

Third. The State of Louisiana has decided that where articles from the Louisiana fisheries, such as oysters, have been made articles of commerce by the statute of the State, that the State must treat said property as no longer restricted by any right of the State.

STATUTE LEVIES DISCRIMINATORY TAX ON AND REGULATES INTERSTATE AND FOREIGN COMMERCE.

An examination of the statute discloses only two classifications of hides and furs subject to the severance tax namely:

1. Those skins and hides sold for manufacture into a finished product in the State.

2. Those skins and hides shipped from the State for any purpose, the mere intended shipment from the State making them subject to the tax.

The tax does not operate against any other furs or hides. Therefore, we have here a discriminatory tax against commodities intended for shipment from the State; the sole basis for the tax being the destination of the commodity for interstate or foreign commerce. Such discriminatory tax against interstate and foreign commerce is invalid.

In *Coe v. Errol, 116 U. S., 517,* Mr. Justice Bradley, as the organ of the Court, stated the law as follows:

> "Until then it is reasonable to regard them as not only within the State of their origin, but as part of the general mass of property of that State, subject to its jurisdiction and liable to taxation if not taxed by reason of their being intended for exportation, but taxed without any discrimination, in the usual way and manner in which such property is taxed in the State.
>
> "Of course, they cannot be taxed as **exports**; that is to say they cannot be taxed by reason or because of their exportation or intended exportation; for that would amount to laying a duty on exports, and would be a plain infraction of the Constitution, which prohibits any State, without the consent of Congress, from laying any imposts or duties on imports or exports; and, although it has been decided, Woodruff v. Parham, 8 Wall., 123, that this clause relates to imports from, and exports to, foreign countries, yet when such imposts or duties are laid on imports or exports from one State to another, it cannot be doubted that such an imposition would be a regulation of commerce among the States, and, therefore, void as an invasion of the exclusive power of Congress. See Walling v. Michigan, ante, 446, decided

> at the present term, and cases cited in the opinion in that case.' * * * If assessed in an exceptional time or manner, because of their anticipated departure, they might well be considered as taxed by reason of their exportation or intended exportation." (Pages 525, 526).

The tax here involved being based solely on the anticipated departure of the commodity from the State is a tax on interstate and foreign commerce.

In *Kansas City Ry. Co. v. Botkin, 240 U. S., 231 and 232,* Mr. Justice Hughes, in delivering the opinion of the Court, said:

> "It must be assumed in accordance with repeated decisions, that the State cannot lay a tax on interstate commerce 'in any form', by imposing it either upon the business which constitutes such commerce or the privilege of engaging in it, or upon the receipts as such derived from it. State Freight Tax Cases, 15 Wall., 232; Philadelphia & Southern S. Co. v. Pennsylvania, 122 U. S., 326, 336, 344; Leloup v. Mobile, 127 U. S. 640; Lyng v. Michigan, 135 U. S. 161, 166; McCall v. California, 136 U. S. 104; Galveston, Harrisburg & Co. Ry. v. Texas, 210 U. S., 217, 228; Western Union Tel. Co. v. Kansas, 216 U. S., 1, 36, 37; Pullman Co. v. Kansas, 216 U. S. 56, 65; Meyer v. Wells, Fargo & Co., 223 U. S., 298; Baltic Mining Co. v. Massachusetts, 231 U. S., 68, 83. And, further, in determining whether a tax has such a direct relation to interstate commerce as to be an exercise of power prohibited by the commerce laws, our decision must regard the substance of the exaction—its operation and effect as enforced—and

> cannot depend upon the manner in which the taxing scheme has been characterized. Galveston, Harrisburg & Co. Ry. v. Texas, *supra;* U. S. Expr. Co. v. Minnesota, 223 U. S. 335, 346; St. Louis Southwestern Ry. v. Arkansas, 235 U. S. 350, 362."

So that whether we consider the tax here involved as an *ad valorem* or a license tax it is invalid in the first instance because it is discriminatory against only those commodities intended for shipment from the State, and in the second instance it imposes an additional license tax on the receipts from interstate commerce of the commodity.

In *Adams v. Mississippi Lumber Company, 84 Miss., 23, 36 Southern Rep. 68,* a privilege tax was imposed on each land, timber mill company, or individual, but the statute provided that its provisions should not apply to sawmill properties who did not ship timber or lumber out of the State. The Court said:

> "Moreover, this section is practically a tax on interstate commerce. The right of any citizen of any State to take himself or his property out of or into any State cannot be taken away, nor can it be hampered by discriminative taxation in any degree whatsoever. This right is universal, subject, only, to regulations in the exercise of the police power to conserve health or morals, and even these must not be arbitrarily exercised to work discrimination. Tiedeman, State and Fed. Control, vol. 4, pp. 490-491; Id., vol. 2, pp. 1032-1038; State v. Moore, 113 N. C. 704, 18 S. E. 342, 22 L. R. A., 472; State v. Wagener, 69 Minn., 207, 72 N. W. 67, 38 L. R. A. 677, 65 Am. St. Rep., 565; Welton v. Missouri, 91

U. S. 275, 23 L. Ed., 347; State v. Bengsch, 170 Mo. 81, 70 S. W., 710; State v. Mitchell, 97 Me., 66, 54 Atl., 887, 94 Am. St. Rep., 481; State v. Montgomery (Me), 47 Atl. 165, 80 Am. St. Rep., 389-390; 2 Tucker on the Const., 528-534, 552."

The tax of the manufactured or prepared or cured skin put on a third party called a "dealer" is absolutely unconstitutional. The definition of a "dealer" is significant. "Any person who ships or carries skins and hides of fur-bearing animals or alligators **out of the State shall be a dealer.**" Last clause of Section One of Act 135 of 1920.

Your Honors will see by the last sentence that the act is aimed solely at the shipment of prepared skins and hides from the State of Louisiana. There are no fur manufacturers in Louisiana and no manufacturers of alligator bags or purses, and the tax is clearly leveled at interstate commerce; but even if there were such manufacturers in Louisiana the act, nevertheless, puts a burden on interstate commerce and in that respect violates the commerce clause of the Federal Constitution, because the State is clearly taxing the man who ships the prepared skins and hides out of the State.

> "It is thoroughly well settled in this Court that State laws may not burden interstate commerce. As one form of burden may exist by taxing the conduct of interstate commerce, such taxation has been uniformly condemned. Examples of cases of that character may be found in Fargo v. Michigan, 121 U. S., 230; Philadelphia & Southern Steamship Co. v. Pennsylvania, 122 U. S., 326; Ratterman v. West-

ern Union Telegraph Co., 127 U. S., 411; Leloup v. Port of Mobile, 127 U. S., 640; Western Union Telegraph Co. v. Pennsylvania, 128 U. S., 39; Western Union Telegraph Co. v. Alabama, 131 U. S., 472. Galveston, Harrisburg & San Antonio Ry. Co. v. Texas, 210 U. S., 217."

United States Express Co. v. Minnesota, 233 U. S., 342, 343.

In *International Paper Company v. Massachusetts, 246 U. S., 135*, at p. 144, the Court quoted approvingly from the case of *Looney v. Crane, 245 U. S., 178*, as follows:

"In the first place it is apparent in each of the cases that as the statutes under consideration were found not to be on their face inherently repugnant either to the commerce or due process clause of the Constitution, it came to be considered whether by their necessary operation and effect they were repugnant to the Constitution in the particulars stated, and this inquiry it was expressly pointed out was to be governed by the rule long ago announced in Postal Telegraph Cable Co. v. Adams, 155 U. S., 688, 698, that 'The substance and not the shadow determines the validity of the exercise of the power.' In the second place, in making the inquiry stated in all of the cases, the compatibility of the statutes with the Constitution which was found to exist resulted from particular provisions contained in each of them which so qualified and restricted their operation and necessarily so limited their effect as to lead to such result. These conditions related to the subject matter upon which the tax was levied, or to the amount of taxes in other respects paid by the corporation, or limitations on the amount of tax

authorized when a much larger amount would have been due upon the basis upon which the tax was apparently levied. It is thus manifest on the face of all of the cases that they in no way sustained the assumption that because a violation of the Constitution was not a large one it would be sanctioned, or that a mere opinion as to the degree of wrong which would arise if the Constitution were violated was treated as affording a measure of the duty of enforcing the Constitution.

"It follows, therefore, that the cases which the argument relies upon do not, in any manner, qualify the general principles expounded in the previous cases upon which we have rested our conclusion, since the later cases rested upon particular provisions in each particular case which it was held caused the general and recognized rule not to be applicable."

In *Hump Hair Pin Manufacturing Company v. Emmerson (United States Supreme Court Advance Opinions No. 12, May 1, 1922, page 343)*, the Court said:

"The turning point of these decisions is whether, in its incidence the tax affects interstate commerce so directly and immediately as to amount to a genuine and substantial regulation of, or restraint upon, it, or whether it affects it only incidentally or remotely, so that the tax is not in reality a burden, although in form it may touch, and in fact, distantly affect, it.

"No formula has yet been devised by which it can be determined in all cases whether or not such a tax is valid; and, applying the repeated declaration of this Court in the cases cited and in many others,

> that the question is inherently a practical one, depending for its decision on the special facts of each case, we are clear that the tax here involved falls within the excepted class described, even though the business done with residents of States other than Illinois be regarded as interstate."

The Court will bear in mind that not only has Congress the power to regulate the interstate transportation of wild animals and the products thereof, but Congress has done so and says (in the Lacey Act) that

> "nothing herein shall prevent the transportation of any dead birds or animals killed **during the season when the same may be lawfully captured and the export of which is not prohibited in the State, territory or district in which the same is killed."** *31 Statutes at Large, 189.*

This Act itself shows that never for a moment had Congress contemplated that articles of commerce manufactured from dead animals could not be shipped at all times.

Therefore, unless the State of Louisiana has absolutely prohibited the exportation of such animals, anyone having lawful possession thereof has the right to ship them from the State. The Act of Congress does not say that the State may "restrict or tax" the interstate shipment. On the contrary, States are not permitted to tax the exportations from the State except insofar as sufficient to pay for an inspection fee where such inspection is necessary or

useful, as provided in Art. 1, Sec. 10, Paragraph 2, of the Constitution of the United States, reading as follows:

> "No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws."

Louisiana does not prohibit the exportation of skins and hides nor of the animals themselves, and they are, therefore, articles of commerce, and interstate shipment, therefore cannot be taxed or otherwise regulated or restricted by the State.

Under the statute the Conservation Commission has formulated rules and regulations requiring all shipments in interstate or foreign commerce of such hides or furs to have attached thereto a certificate or label issued by the Department of Conservation showing, among other things, the payment of the two per cent tax and prohibiting any carrier from accepting such shipments unless so labeled or tagged. (Par. 3 and 4 of Supplemental Petition, Tr., pp. 9 and 10.) This, we submit, is a direct regulation of interstate commerce by a commission acting under powers conferred upon it by the State Legislature.

In the case of *Chicago, B. & Q. R. R. Co. v. Giles, 235 Fed., 804*, Sec. 10 of Act 240 of 1915 of the State of Colorado, was held invalid as an unauthorized regulation of commerce. Section 10 of the Colorado Act reads as follows:

> Section 10. "It shall be unlawful for any person association or corporation, or for any common or

special carrier, to ship or knowingly carry any intoxicating liquor to any point in this State, or from one point to another within this State, without marking conspicuously on the package containing such liquor, where it can be plainly seen and read, the words, 'This package contains intoxicating liquor.' Laws Colo. 1915, page 278."

The syllabus in the case reads, in part, as follows:

"In view of the exclusive power of Congress over interstate commerce and the fact that the interstate commerce shipment of intoxicating liquors requires uniformity of regulation the States are without power, as was attempted by Prohibition Act, Colo., Sec. 10, to regulate the **marking of shipments** of liquor." *Chicago, B. & Q. R. Co. v. Giles, 235 Fed., 804.*

The State Court avoids the effect of these well settled principles of Constitutional law, apparently, on the grounds:

(a) That the exaction is neither a property nor a license tax but a charge levied under the police power, under which power license taxes also are levied, to obtain funds for the enforcement of the protective measures of the statute providing for closed seasons.

(b) That the property on which the charge is levied is and remains the common property of the sovereign and is, therefore, subject to any burdens or conditions that the State may see fit to impose as a condition precedent to the divestiture of its title, the payment of the tax herein levied being a *sine quo non* of the divestiture of the State's title.

(a)

It is respectfully submitted that the taxes imposed on plaintiffs in error are not in the nature of a Police Regulation. The object of the act is to collect revenue. It says:

> Sec. 7. "Be it further enacted, etc., That all moneys payable under the provisions of this act shall be paid to and collected by the Department of Conservation under such rules and regulations as said Department may require; and all moneys so paid shall go to the credit of the Department of Conservation in the State Treasury as is now done with the other funds of said Department."

The fact that the money is paid to the State through the Conservation Department does not make it the less a tax for revenue. Poll taxes are turned over to the school fund but are none the less revenue for the State. Further, the business of the dealer is in no way regulated nor are the hides and furs at any time inspected, valued or appraised, except by arbitrarily fixing the tax on what the dealer has paid. In fact, exclusive of Sections eight and nine of the act providing for open seasons, it is devoid of regulatory measures. Practically every other provision of the act relates to the levying and collection from the dealer of the two cent *ad valorem* tax. The Department at no time comes in contact with either the dealer or buyer except for the purpose of ascertaining the amount of the tax to be paid and its collection.

The Supreme Court of Louisiana has held that taxes by the State under the guise of an exercise of the police power are null and void where the services for which the

exaction is demanded are not performed in the interest of the person required to pay it.

In *New Orleans v. Cosgrove, 129 La., 686,* the Court said:

> "By Act 15, p. 16, of 1908, municipalities of over 50,000 inhabitants (by which term the City of New Orleans is clearly indicated) were authorized to regulate the use of steam boilers and to create a board of examiners of steam boiler engineers. Under this act, the City Council of New Orleans adopted the ordinance in question. This ordinance requires steam boiler engineers to pay an annual license of $2.50.
>
> "The accused contends that this requirement violates Article 229 of the Constitution in two respects: It levies a license tax on a person pursuing a mechanical pursuit; and it imposes a greater license tax than the State does, in that it imposes a license tax upon a calling not thus burdened by the State.
>
> "Said article reads as follows:
>
> " 'The General Assembly may levy a license tax, and in such case shall graduate the amount of such tax to be collected from the persons pursuing the several trades, professions, vocations and callings. All persons, associations of persons and corporations pursuing any trade, profession, business or calling may be rendered liable to such tax, except clerks, laborers, clergymen, school teachers, those engaged in mechanical, agricultural, horticultural, and mining pursuits, and manufacturers other than those of distilled, alcoholic or malt liquors, tobacco, cigars, and cotton seed oil. No political corporation shall impose a greater license tax than is imposed by

> the General Assembly for the State purposes. This restriction shall not apply to dealers in distilled, alcoholic or malt liquors.'
>
> "Under this constitutional provision, the accused, who is a person engaged in a mechanical pursuit, is exempt from a license tax.
>
> "Said license is sought to be likened to quarantine fees (Morgan's R. R. & Steamboat Co. v. Louisiana, 118 U. S., 455, 6 Sup. Ct. 1114, 30 L. Ed., 237), and oil inspection fees (Board of Health v. Standard Oil Company, 107 La., 713, 31 South, 1015), and other such like exactions, the validity of which has been sustained; but the broad distinction between those exactions and the said annual license is that the service for which they are demanded are performed in the interest of the person required to pay them, whereas the present license tax could be said to be imposed in the interest of these boiler engineers sought to be burdened with it only ironically speaking."

It is not claimed nor can it be claimed that any possible benefit from the regulatory measures of the act could be derived by the dealer. No service is performed by the State of Louisiana in the interest of the dealer. No benefit can come to the State of Louisiana except only the revenue from the tax, because the killing of animals *ferae naturae* is in no way limited by the act except in providing for the closed seasons.

But even admitting that the charge levied is not in the nature of a tax, but of an exaction under the police power to defray the expense of enforcing the regulatory measures

of the act, it is submitted, that as the dealer has nothing to do with the animals as such and as the only persons who are regulated are the trappers, that is those who take the animals in their wild state and remove the skin, the expense of such regulation should be borne by the trapper and not the dealer.

The Supreme Court of Louisiana says:

> "In imposing this charge the state was compelled to act upon sound business principles and to levy the same upon the dealers in furs and skins, as such dealers are known, have established places of business, make inventories of their **stock and are easily accessible for the purpose of collecting such charge.** To levy such a charge upon an itinerant trapper at the time of severing the skin or hide with no funds, place of abode or business, and with no inventory of stock would deprive the State and its Department of Conservation of any efficient means of ascertaining the number or value of the skins or hides and of collecting the charge." 38.

It is a novel principle that expediency justifies the shifting of exaction from the one who ought to pay it to one who can be more readily forced to pay it. But, even admitting the correctness of the State Court's attitude that the State under its police power may place the financial burden of enforcing its regulations on any particular class of those dealing in the commodity regulated, it is submitted that it cannot classify those engaged in interstate commerce in the particular commodity and make them defray such expense, for such classification cannot be justified and

is discriminatory against interstate and favorable to internal commerce.

(b)

We do not contend that wild animals and game are not absolutely subject to the control of the State; nor that the State may not prescribe the time during which such animals may be taken and the method of capture. It may adopt such measures as it sees fit for the preservation and protection of the wild animals within its territory, even to the extent of prohibiting the possession of shotguns by aliens; and in order to enforce its protective measures it may prohibit the possession of game during the closed season even if brought from without the State; to reserve such animals for the use of its own citizens it may prohibit their exportation from the State.

Manchester v. Massachusetts, 139 U. S., 240.
Geer v. Connecticut, 161 U. S., 519.
Silz v. Hesterberg, 211 U. S., 31.
Patsone v. Pennsylvania, 232 U. S., 138.

But the situation here is a materially different one for the reasons:

1. The commodity here involved is no longer merely a part of a dead animal,—it has become a manufactured product, a cured hide or fur.

2. The State has permitted them to become articles of interstate commerce, has parted with its ownership and can no longer levy a discriminatory tax by reason of the interstate or foreign destination of the product.

3. There is here involved the question of taxation and not merely police regulation.

Under the provisions of the act the hides and furs are in no way taxed until they come into the hands of the dealer. The animal has been captured by the trapper, its hide severed, cleaned, put on a board and dried and otherwise cured and prepared for commerce, has been brought in by the buyer from outlying districts to central markets, where they have been disposed of to the dealer. The labor and skill of man has been applied to it not only in reducing the animal to possession, but in severing, cleaning, curing and otherwise making it a saleable article, by all of which its value has been increased to the point where its original value as part of the dead animal constitutes relatively a very small proportion of its value as a cured hide or fur. All of this has been done under the express sanction and authorization of the State.

The State defines a trapper as one who not only traps the animal in its wild state, but who also "removes the skin therefrom for sale." It defines a buyer as one "who buys from the trapper with the intention to sell to another in this State" and a "dealer" as "one who buys from the trapper or buyer and ships from the State." The State, therefore, contemplates that the skins and hides taken from the animals shall not only become an object of internal commerce, but shall also become the subject of interstate commerce. There is no prohibition on shipments from the State; on the contrary, such shipment is expressly allowed

and provided for. The State then, has expressly authorized the taking from the mass of the common property of the hide and fur for the purpose of its curing and preparation for commerce in unlimited traffic therein in both internal and external commerce.

The statement in the act that these hides and furs shall remain the property of the State until the severance tax shall have been paid is a mere reservation of title inconsistent with and contradictory of the action of the State. It is merely a subterfuge with the view of laying the discriminatory tax on interstate commerce.

In *State v. Ferrandou, 130 La., 1035*, the Supreme Court of Louisiana held in regard to oysters produced in Louisiana, which are as much under control of the State as game and wild animals, that once they permitted or were treated by the State as articles of commerce restrictions on their exportation to other states is a violation of the interstate commerce law. The Court said:

> "On the other hand, in Robbins v. Taxing District, 120 U. S., 489, 7 Sup. Ct., 592, 30 L. Ed., 694, it was held that (quoting from the syllabus):
>
> " 'The negotiation of sales of goods which are in another State, for the purpose of introducing them into the state in which the negotiation is made, is interstate commerce.'
>
> "The negotiation, therefore, in Mississippi, of the sale of oysters which are in Louisiana (and being lawfully sold there on open market), for the purpose of introducing them into Mississippi, is interstate commerce, and a condition imposed by the

law of Louisiana, that one buyer, in Mississippi, shall have his oysters shipped to him provided he intends to make this use of them, and another buyer may have his shipped, provided he intends to make that use, is a regulation of that commerce within the law, as we understand it, vesting such power of regulation in Congress; nor do we think that, as applied to this case, it affects the discriminating character of the regulation, that the oysters were brought in New Orleans, by defendant, shipped by him to the canning company in Biloxi, for which he purchased, or to which he sold them.

"In Brimmer v. Rebman, 138 U. S., 78, 11 Sup. Ct., 213, 34 L. Ed., 862, it was held that:

" 'A State cannot, under the guise of its police power, or of enacting inspection laws, make discriminations against the products and industries of its own or of other states.'

"Nor can a state, with reference to person engaged in interstate commerce, make discriminations in favor of those who patronize its industries and those who patronize the industries of other States."

The case of *Elmer v. Walker, 275 Fed., 686,* is a very instructive case in point. The Legislature of Alabama passed a law taxing shrimp. This statute provided that shrimp were property of the State and provided for their protection, regulated the catch, and provided a closed season, it being provided (Section 7) that it was unlawful to catch market shrimp unless a tax of five cents per barrel was paid by the person catching the same or buying same from independent fishermen, for the purpose of drying or shipping. The law provided (Section 8) that it was unlaw-

ful to ship fresh shrimp to a point beyond the boundary line of the State, unless the usual market price was higher outside of the State than that within the State; and in case fresh shrimp were shipped outside of the State, the person or corporation shipping the shrimp should pay a tax of twenty cents per barrel on shrimp transported from the State.

The law provided further (Section 12) that no person, who has not been a *bona fide* resident of the State for more than a year next preceding, shall be permitted to catch shrimp in the waters of the State to be shipped out of the State. In passing on the validity of this act the Federal Court said:

> "Here the act, under express terms of Section 7, and by fairest implication under Sections 8 and 12, recognizes fresh shrimp as articles of interstate commerce and permits their shipment in unlimited quantities in such commerce by rail and otherwise, except by water, upon the payment of license and the tax of five (5) cents per barrel, and upon making the required reports. Recognizing fresh shrimp as a commodity of general trade and interstate commerce, as the act clearly does, the restrictions attempted to be imposed by Sections 8 and 12 against the shipment of such fresh shrimp by water, and the quadrupled tax upon the commodity, are evidently a burden upon interstate commerce, and, as such, hostile to the commerce clause of the Constitution. Perhaps it is not too much to say that furher argument, or any argument at all, is unnecessary. The

vices in Sections 8 and 12, which have been pointed out are sufficient to compel this Court to declare that such sections are null and void and that they cannot be enforced.

"If further authority for this conclusion is desired, State v. Ferrandau, 130 La., 1035, 58 South., 870, An., Cas., 1913 D., 1170, is in point. There Louisiana sought to create within the State a monopoly of the canning of oysters taken from its waters, just as here the State of Alabama has attempted to do in the canning of shrimp taken from her waters, by prohibiting the shipment of oysters beyond the limits of Louisiana for canning or packing outside of that state, while the act permitted the unlimited traffic in interstate commerce of oysters for any other purpose. The Supreme Court of Louisiana, in a very able opinion by Mr. Justice Monroe, with unanswerable logic, condemned the statute and cited a number of sustaining decisions, among them Brimmer v. Rebman, 138 U. S., 78, 11 Sup. Ct., 213, 35 L. Ed., 862, to the effect that—

"'A state cannot, under the guise of exerting its police powers, or of enacting inspection laws, make discrimination against the products of its own or of other states."

Elmer v. Walker, 275 Fed., 686.

In both of the cases in which the acts were held unconstitutional, there was lacking the element which is here present, that is, the element of manufacture. The shrimp and oysters were still shrimp and oysters, but here the article is not merely part of an alligator or rat, but is a cured or prepared hide or fur.

In all of the cases heretofore decided by this Honorable Court involving State control over animals *ferae naturae* the provisions attacked and sustained were regulatory ones for the conservation and protection of wild animal life. Here the question is one of taxation. The theory of the decisions sustaining regulatory measures is readily ascertainable from the following extracts from the opinion in *Geer v. Connecticut, 161 U. S., 519,* at pages 529 and 534:

> "Whilst the fundamental principles upon which the common property in game rests have undergone no change, the development of free institutions has led to the recognition of the fact that the power of control lodged in the State resulting from this common ownership, is to be exercised, like all other powers of government, as a trust for the benefit of the people, and not as a prerogative for the advantage of the government, as distinct from the people, or for the benefit of private individuals as distinguished from the public good. Therefore, for the purpose of exercising this power, the State as held by this Court in Martin v. Waddell, 16 Pet., 410, represents its people, and the ownership is that of the people in their united sovereignty. The common ownership, and its resulting responsibility in the State, is thus stated in a well considered opinion of the Supreme Court of California:
>
> " 'The wild game within a State belongs to the people in their collective sovereign capacity. It is not the subject of private ownership except insofar as the people may elect to make it so; and they may, if they see fit, absolutely prohibit the taking of it, or traffic and commerce in it, if it is deemed necessary

for the protection or preservation of the public good. *Ex parte Maier, ubi sup.*'

"The same view has been expressed by the Supreme Court of Minnesota, as follows:

"'We take it to be the correct doctrine in this country, that the ownership of wild animals, so far as they are capable of ownership, is, in the State, not as a proprietor, but in its sovereign capacity as the representative and for the benefit of all its people in common.' State v. Rodman, *ubi sup.*

"The foregoing analysis of the principles upon which alone rests the rights of an individual to acquire a qualified ownership in game, and the power of the State, deduced therefrom, to control such ownership for the common benefit, clearly demonstrates the validity of the statute of the State of Connecticut here in controversy. The sole consequence of the provision forbidding the transportation of game, killed within the State, beyond the State, is to confine the use of such game to those who own it, the people of that State. (P. 529.)

"Aside from the authority of the State, derived from the common ownership of game and the trust for the benefit of its people which the State exercises in relation thereto, there is another view of the power of the State in regard to the property in game, which is equally conclusive. The right to preserve game flows from the undoubted existence in the State of a police power to that end, which may be none the less efficiently called into play, because by doing so interstate commerce may be remotely and indirectly affected. Kidd v. Pearson, 128 U. S., 1; Hall v. De Guir, 95 U. S., 485; Sherlock v. Ailing, 93 U. S., 99, 103; Gibbons v. Ogden, 9 Wheat., 1. Indeed the source of the police power as to game birds (like

> those covered by the statute here called in question) flows from the duty of the State to preserve for its people a valuable food supply. Phelps v. Racey, 60 N. Y., 10; *Ex parte Maier, ubi sup.;* Magner v. The People, *ubi sup.*, and cases there cited." (Pp. 534-535.)

The only conservatory measures in this statute are those providing for closed seasons during which alligators and fur-bearing animals may not be lawfully captured. There is no limitation on the number that may be captured by the trapper during the open season. There is no restriction on the quantity that may be shipped from the State. **Indeed, these hides and furs would be without commercial value were it not for the ability to dispose of them in interstate commerce.**

Realizing this situation the State authorizes and sanctions the exportation from the State of the hides and furs. In doing this it is exercising its rights, but in seeking to tax the hides and furs after they have been prepared for shipment and sold to merchants because of their anticipated departure from the State and thus hamper and burden interstate traffic in such hides and furs it is attempting to exercise the powers emanating from its ownership "as a prerogative for the advantage of government;" it is seeking to collect a discriminatory tax after it has become, with the express sanction and authorization of the State, an article of commerce in the broadest sense of the word. The State then is exercising its taxing and not its police power and cannot discriminate against hides and furs destined

for interstate commerce nor can it lay any special charge on such hides and furs because of its former ownership.

It is respectfully submitted that for the foregoing reasons the taxation clauses of the said statute violate article one, section eight, paragraph three of the Constitution of the United States. Insofar as foreign shipments are concerned, for the same reasons the statute is violative of article one, section ten, paragraph two of the Constitution of the United States.

STATUTE VIOLATES DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT.

It is respectfully submitted that the act in question deprives plaintiffs in error of their property without due process of law and denies to them the equal protection of the law in the following respects:

(a) It makes an improper delegation of legislative authority to the Board of Commissioners of the Department of Conservation.

(b) It provides for unjust and discriminatory taxes not assessed against other persons within the jurisdiction engaged in the same business and assesses such taxes in a manner contrary to the provisions of the State Constitution, thus denying to plaintiff in error the equal protection of the laws and depriving them of property without due process of law.

(a)

The sections of the statute providing for the tax is as follows:

> "Section 3. Be it further enacted, etc., That there be and is hereby levied a severance tax of two (2c) cents on the dollar on and of the value of all skins and hides taken from any wild fur-bearing animals or alligators within this State, which severance tax shall be paid by the dealer hereinabove defined, to the State, through the Department of Conservation, under such rules and regulations as shall be determined by the Department of Conservation, which department is hereby authorized and empowered to ascertain the actual purchase price of skins and hides paid by the dealer subject to pay the tax and to determine the time when, and the manner in which, such severance tax shall be paid, and to adopt and enforce rules and regulations, not contrary to the provisions of this act into effect in relation to the collection of such severance tax and the licenses herein imposed. It shall be a violation of this act for any person, firm, corporation, or association to ship or carry from this State any skin or hide of any fur-bearing animal or alligator on which the severance tax is due, without the said severance tax on said skin or hide being paid to the State of Louisiana."

Section 6 provides:

> "Section 6. Be it further enacted, etc., That it shall be the duty of all buyers and dealers in hides and skins of fur-bearing animals and alligators within the State of Louisiana to keep a complete record of all purchases and sales made by them, showing the

number and kind of hides and skins bought and sold, from whom, the date of said purchase, and the amount paid for each purchase, and when each purchase was made, and to make a monthly report or otherwise, to the Department of Conservation, giving all information to said department that it may require under its rules and regulations. All records, books and memoranda, etc., of said buyers and dealers, shall be open at all times to the inspection of the duly authorized agents of the Department of Conservation. Any trapper may be required by the Department of Conservation to furnish it any information needed to check the records of buyers and dealers."

These are the only provisions of the act in reference to the tax and we respectfully submit that they do not fix the basis of the tax but leave the assessment and fixing and collecting of the tax to the beneficiary, the Department of Conservation, which department consists of a single individual.

Under these provisions the department is given power to make rules and regulations for the collection of the tax. It may assess the hides and furs as of their value at the time of severance, which would be comparatively little, or it may place the tax on the value of the hides and furs at the time that the dealer is about to export them from the State, or it may fix the tax on any one of several intermediate values. Or it may arbitrarily assess the furs at a time when the market value is high, or on the basis of a low market, or may fix the time of payment at the beginning of the year, at the end of the year, as may please the fancy of the com-

missioner. Thus the tax may, within the arbitrary power of the department, be two cents on the value of the skin while it is still wet with the blood of the animal, or it may be two cents on the value of the skin after the trapper has thoroughly cleaned it, skillfully stretched and dried it. or again the tax may be levied on the value of the hide after the buyer has brought it from outlying districts to central markets, or again after it has been cured and tanned and needs only plucking and lining to be ready for use as an article of clothing.

It is impossible from the provisions of the act to say which of these several values of the hide or fur shall constitute the value upon which the two per cent tax is to be levied. Who then makes the assessment and fixes the amount of the tax? The Department of Conservation under a one-man control can fix the tax in amount and time and manner of collection.

Under the provisions of the act the department is authorized and empowered to determine the time when and the manner in which the tax shall be paid and to adopt and enforce rules and regulations to carry the provisions of this act into effect in relation to the collection of the severance tax and license herein imposed. The act thus lays down no rules or regulations. Under the authority granted the department might require such reports and records, data and information and otherwise so oppress the dealer as to render the carrying on of his business so burdensome as to become unprofitable.

Under our law *ad valorem* license taxes fall due on a fixed date determined by the Legislature, but in this instance it is left to the arbitrary power of the Conservation Commission to say when and where and how the tax shall be paid. It may say to a man in one parish, you shall come to the Parish of Orleans to pay the amount there; to another, you may pay in your own parish; it may say that the tax shall fall due on the first of March or on the first of December; it may say when the tax bears penalties or it may say that it shall bear no penalties whatever.

In other words, the Conservation Commission is made absolutely legislator, assessor, tax collector and beneficiary. This, it is submitted, subjects plaintiffs in error to arbitrary control by a "government of men and not of laws" in violation of the due process clause of the Fourteenth Amendment of the Constitution of the United States.

In *Yick Wo v. Hopkins, 118 U. S., 356,* this Court said:

> "That the fundamental rights to life, liberty and the pursuit of happiness considered as individual possessions are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the commonwealth 'may be a government of laws and not of men.'"

In *Noble v. Douglas, 274 Federal, 672,* in considering a statute creating a Board of Dental Examiners and delegat-

ing to them power to examine applicants for licenses without any restriction on said power, the Court said:

> "The complaint is that there has been no legislative regulation of the practice of dentistry, but merely an attempt on the part of the Legislature to delegate to the Board of Dental Examiners the regulation of the practice of dentistry. * * *"

In the course of its opinion in considering the decision of the State Court the Federal Court said:

> "The Court evidently assumed that the board had adopted such rules, and that they were reasonable rules, and, inferentially, that they had followed such rules, and, further, that they could be depended upon to continue to do so. This appears to us to be a *non sequitur*.
>
> "The question of whether arbitrary power is included in the terms of a statute is not to be determined by ascertaining whether arbitrary action has been had under it, else we would be compelled to conclude in one case that arbitrary power had been conferred by a statute because arbitrary action had been taken under it, and in another that arbitrary power had not been conferred by a statute because, forsooth, in the particular case considered, there had been no arbitrary action under it. The power would be conferred to make rules, if at all, whether the rules were good or bad. If the rules were bad it would be an abuse by the board of the power conferred, and not want of power to make rules."

The Court held the statute void as not an exercise of the police power of the State, but an arbitrary and unwarranted interference with the constitutional right to carry on lawful business.

So it is submitted here that the Louisiana Act 135 of 1920 attempts to confer on the Conservation Commission full and complete power to assess, levy and collect the two cents *ad valorem* tax and to this end to make such rules and regulations as it may see fit without in any manner laying down any general principles for or restrictions to the exercise of the power granted.

(b)

The effect of the act is not so much to discriminate against non-residents as it is to discriminate against citizens and residents of the State who are engaged in selling and shipping the hides in interstate commerce and in favor of those of its residents who otherwise deal in the same commodity, to place the burden of the tax on the resident interstate shipper. The State gives the common property of the captured wild animal to the **trapper**; it allows him to make the profit and enjoy the recompense of his skill and labor in capturing the animal, severing the hide and applying to it various conservatory processes; it allows the **buyer** to reap the benefit of his dealings with the trapper of collecting the hides from the outlying districts and bringing them to central markets; it permits of the hides going through further curative processes by all of which their value is continually increased, and the value and skill and effort of the **trapper** and **buyer** is included on the price paid for the article by the dealer. No regulatory measures are provided for save the closed season, until the owner of the hide or fur intends to ship from the State; then and only then, under the provisions of the statute, does an *ad*

valorem tax of two cents become due. In other words, the State sanctions the severance of the hide from the general mass of the common property; authorizes its sale and resale and in every way permits it to become an article of internal commerce; the act goes further and contemplates and authorizes the hide or fur to become a commodity of interstate commerce; **it levies no tax on all of those who deal with the article within the State's confines, but it does levy a tax against those who deal with the article in interstate instead of internal commerce;** this is a discrimination in taxation for which we are unable to conceive any just basis. Further, the State not only has treated the hides and furs as articles of internal commerce, and not only does the act contemplate and authorize their becoming commodities of external commerce, but the State has gone further and recognized the ownership of the dealers by compelling them **to pay the general personal property tax on these hides and furs, constituting stock in trade of plaintiffs in error.** Further, the State exacts from fur dealers, as from other merchants, the payment of the regular annual license tax, graduated according to the gross income on business—in the instant case "on the business of selling hides and furs." Thus the State has recognized these hides and furs as articles of general commerce, has taxed plaintiffs in error as the owners of the hides and furs, has taxed their business for selling the same hides and furs, and now by this act of the Legislature seeks to impose on the dealers an additional license tax and an additional *ad valorem* tax not levied on any other business or merchants. In

this way, we submit, the act is doubly a denial to plaintiffs in error of the equal protection of the laws.

The tax here levied is indisputably an *ad valorem* tax. If it is a property tax it violates Articles 225 of the State Constitution requiring uniformity and equality and a definite process of taxation to which this statute in no way conforms. Article 225 of the State Constitution provides as follows:

> "Taxation shall be equal and uniform throughout the territorial limits of the authority leving the tax, and all property shall be taxed in proportion to its value, to be ascertained as directed by law; provided, the assessment of all property shall never exceed the actual cash value thereof; and provided further, that the taxpayers shall have the right of testing the correctness of their assessments, before the Courts of Justice. In order to arrive at this equality and uniformity, the General Assembly shall provide a system of equality and uniformity in assessments based upon the relative value of property in the different portions of the State. The valuations put upon property for the purposes of State taxation shall be taken as the proper valuation for purposes of local taxation, in every subdivision of the State."

If it is a license tax it contravenes Article 229 of the State Constitution, which reads as follows:

> "Those engaged in the business of severing natural resources, such as timber and minerals from the soil or water, whether they thereafter convert them by manufacturing or not, may also be rendered

> liable to a license tax, but in this case the amount to be collected may either be graduated or fixed according to the quantity or **value of the product at the place where it is severed."**

This is the only provision in the State Constitution authorizing the imposition of a tax on natural resources and it authorizes the imposition of a license tax only. Act 135 attempts to impose such a license tax by providing for the issuance of licenses to dealers, upon the payment of $25 by resident and $50 by non-residents. But it goes further and attempts to place upon the dealers an *ad valorem* tax, which, applying the rule, *expressio unius est exclusio alterius*, is without constitutional authority. As a matter of fact the dealers are not engaged in severing natural resources. This is evident by the very definition of the word dealer contained in the act.

In *State v. Styles, 139 La., 540*, the Supreme Court held that Article 229 of the Constitution does not authorize the levying of a license tax on the land owner or realty owner who is not engaged in the business of severing natural resources from the soil, and stated that if the Legislature had undertaken to impose this license tax upon the land or realty owner not engaged in the business of severing natural resources from the soil, it would have been without any constitutional authority.

The language of the State Constitution is plain. It says who may be taxed, namely, those engaged in the business of severing natural resources; it says what kind of a tax may

be levied, namely, a license tax; it allows a choice between a graduated or fixed license tax, but expressly provides whether a tax be graduated or fixed, it must be based on quantity or value of the product at the place where it is severed. Its enforcement as either a property tax or license tax in view of the provisions of the State Constitution would be a taking of petitioner's property without due process of law in violation of the Fourteenth Amendment of the Federal Constitution, for it would be exacting from the plaintiffs in error the payment of money in the nature of a tax for which there is no authority.

CONCLUSION.

The decision of the Supreme Court of Louisiana is based solely upon the fact that the skins and hides prepared and manufactured for shipment were once parts of wild animals belonging to the State.

For that reason the Court seems to think that no constitutional restriction controls the State even after the separation and preparation for commerce.

That even in the hands of merchants buying the prepared skins from other merchants, who themselves have bought them from the trappers, the skins and hides are property of the State.

For that reason, although Article 229 of the Constitution of Louisiana provides that the severance tax must be paid by the trapper and assessed at the time of severance, the Constitution may be disregarded.

That although the State has provided most carefully by legislation for the assessment of all other property it can delegate to one man the power to say when, how and in what manner taxes on prepared furs and hides shall be collected, making this man, known as the Department of Conservation, the assessor. **He can say the value of the skin when on the animal is its correct valuation,** or the value of the skin **when taken from the animal shall be its correct value,** or the **value of the cured and prepared skin shall be its value,** or he can say the **price paid by the last purchaser can be the value.** He can change the tax in another way. He can make **the tax onerous by making it mature on the first of the year,** or he can make the price **easier by providing it may mature at the end of the year. He can provide the rate of interest the past due tax shall carry shall be light or onerous.**

For the same reasons, although the Constitution of Louisiana provides for equal and uniform taxation, and the laws of Louisiana lay down with meticulous care how a man shall be assessed and how his taxes must be collected, the State may impose an additional 2% tax on fur and hide merchants.

Constitution of Louisiana of 1913, Article 225, Act 171 of 1898.

For the same reason, although the Constitution and laws of Louisiana provide for a license to be imposed on its merchants, the State may impose an additional license on

its "fur dealers" to the ones already exacted by the State and city for carrying on the business of dealing in furs.

Constitution of Louisiana, Article 229, Act 171 of 1898.

That notwithstanding the interstate commerce clause of the Constitution of the United States and the clause forbidding a State to levy a duty on exports to foreign countries, the State may put restrictions of all kinds and an additional two per cent tax to be paid by merchants shipping skins and hides to the States.

We cannot believe for one instant that the opinion of the Supreme Court of Louisiana will be approved by your Honors.

Respectfully submitted,

EDWIN T. MERRICK,
RALPH J. SCHWARZ,
MORRIS B. REDMANN,
Of Counsel.

Reversed.

LACOSTE ET AL. *v.* DEPARTMENT OF CONSERVATION OF THE STATE OF LOUISIANA.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

No. 65. Argued October 11, 1923.—Decided January 7, 1924.

1. By right of ownership, and in the exercise of police power, a State may regulate the taking of wild animals within its borders, their subsequent use, and the property rights that may be acquired in them. P. 549.
2. The question whether a state law interferes with or burdens interstate commerce, is determined here with regard to the substance of the law; its form, or its characterization by the state legislature or courts, do not necessarily control. P. 550.
3. In the exertion of its police power to protect wild animals for the common benefit, a State may require payment of a tax upon their skins or hides as a condition precedent to transfer of its title to the dealer paying the tax. *Id.*
4. The fact that such skins or hides are intended to be shipped out of the State without preliminary manufacture does not prevent their taxation by the State while in the hands of dealers and before they move in interstate commerce. P. 551. *Coe* v. *Errol*, 116 U. S. 517.
5. Nor does the fact that the law, for certainty of execution, taxes the hides or skins in the hands of the dealer who ships them out

of the State, or buys them for that purpose or to sell them for manufacture within the State, rather than taxing them in the hands of the trapper or buyer from whom the dealer procures them, constitute it an interference with interstate commerce. P. 551.

6. A law imposing such a tax does not violate due process of law by delegating to an administrative body the authority to ascertain the prices of skins and hides paid by the dealer, determine the time and manner in which the tax shall be paid, and adopt and enforce reasonable rules and regulations not contrary to the act, in relation to the collection of the tax. *Id.*

7. Wild animals taken and possessed with the permission of a State, upon prescribed conditions, may reasonably be distinguished from other classes of property, so that their skins and bodies may be taxed to dealers therein, consistently with equal protection of the laws, without imposing similar taxes on other kinds of property belonging to merchants. P. 552.

8. A State has great latitude in choosing the means for protecting wild life within its borders. *Id.*

151 La. 909, affirmed.

ERROR to a judgment of the Supreme Court of Louisiana which affirmed a judgment dismissing a suit brought by Lacoste et al., to enjoin the State Department of Conservation from enforcing payment of a severance tax.

Mr. Morris B. Redmann and *Mr. Edwin T. Merrick*, with whom *Mr. Ralph J. Schwarz* was on the brief, for plaintiffs in error.

Mr. Paul A. Sompayrac, Assistant Attorney General of the State of Louisiana, with whom *Mr. A. V. Coco*, Attorney General, was on the brief, for defendant in error.

Mr. Justice BUTLER delivered the opinion of the Court.

Plaintiffs in error are severally engaged in Louisiana in the business of buying, selling, importing, exporting and dealing in hides, skins and furs, some of which come from wild furbearing animals and alligators in that

State. They brought this suit in the Civil District Court of the Parish of Orleans to enjoin the defendant in error from enforcing the payment of a severance tax levied by Act 135 of the General Assembly of Louisiana, 1920.[1] By that act, all wild furbearing animals and alligators in the State, and their skins, are declared to be the property of the State until the severance tax thereon shall have been paid. A dealer is defined to be one who buys such

[1] The scope and substance of the act are indicated by its title, which is as follows:

AN ACT

Declaring the wild furbearing animals and alligators of this State to be the property of the State, and the skins taken from such animals to be the property of the State until there shall have been paid to the State of Louisiana, through the Department of Conservation, the severance tax levied thereon by the provision of this Act; levying an annual license tax on persons, firms, corporations or associations of persons engaged in the buying of hides and skins taken from wild furbearing animals and alligators, and prohibiting the conduct of such business without such license; levying a severance tax of two (2c) cents on the dollar of and on the value of the hides and skins taken from the wild furbearing animals and alligators of this State; fixing the time when, by whom, and under what conditions such severance tax shall be paid; defining the time and making an open season for the trapping of all furbearing animals and the taking and killing of alligators in this State; to allow licensed trappers to hunt wild game without additional license; to prohibit persons, firms, corporations, or associations from shipping or selling hides or skins taken from wild furbearing animals or alligators of this State unless said severance tax is paid thereon; requiring all persons dealing in hides and skins taken from wild furbearing animals and alligators of this State to keep record of all receipts and sales of said hides and skins and to make reports of same to the Department of Conservation; to define trappers, fur dealers, fur buyers, resident and non-resident; to authorize the Department of Conservation to adopt rules and regulations providing for the collecting of the severance tax and licenses herein imposed and regulating the handling and disposition of all hides and skins of furbearing animals and alligators; to provide penalties for the violation of this Act and to repeal all conflicting laws.

skins and hides from either a trapper or a buyer and ships them from the State, or sells them for manufacture into a finished product in the State, or one who ships or carries them out of the State. Section 3 levies a severance tax of two per cent. on the value of all skins and hides taken from wild furbearing animals or alligators within the State, to be paid by the dealer to the State through the Department of Conservation. By other sections, trappers, buyers and dealers are required to pay license fees and to furnish to the department information concerning their respective occupations; an open season is fixed in each year for the taking of furbearing animals and alligators respectively, and such taking is prohibited at other times.

In their complaint, the plaintiffs in error aver that the defendant in error demands and proposes to enforce payment of the severance tax. They declare that they are willing to pay the license fee under protest and without conceding the validity of the act, but that defendant in error has refused to accept such payment or to issue licenses until the severance tax shall have been paid. It is set forth that the defendant in error has formulated rules and regulations requiring all shipments of such skins and hides to have attached thereto a certificate or label issued by the defendant in error, showing the payment of the severance tax, and prohibiting any carrier from accepting such shipments if not so labeled. It is alleged that defendant in error is about to seize and confiscate all shipments of skins and hides to be made by plaintiffs in error, and that such seizure would be illegal and would constitute a taking of property without due process of law, and would inflict upon them irreparable injury and damages, leaving them without remedy therefor.

Defendant in error moved to dismiss the suit on the ground that the complaint failed to state a cause of ac-

tion, and the District Court granted the motion. The case was taken on appeal to the Supreme Court of Louisiana, and that court denied all contentions of plaintiffs in error, including one that the act is repugnant to the commerce clause of the Constitution of the United States and to the Fourteenth Amendment, and affirmed the judgment.

The wild animals within its borders are, so far as capable of ownership, owned by the State in its sovereign capacity for the common benefit of all of its people. Because of such ownership, and in the exercise of its police power the State may regulate and control the taking, subsequent use and property rights that may be acquired therein. *Geer* v. *Connecticut*, 161 U. S. 519, 528; *Ward* v. *Race Horse*, 163 U. S. 504, 507; *Silz* v. *Hesterberg*, 211 U. S. 31, 39; *Patsone* v. *Pennsylvania*, 232 U. S. 138, 143; *Kennedy* v. *Becker*, 241 U. S. 556, 562; *Carey* v. *South Dakota*, 250 U. S. 118; *State* v. *Rodman*, 58 Minn. 393, 400.

Whether the tax here involved might be upheld by virtue of the power of the State to prohibit, and therefore to condition, the removal of wild game from the State, we do not now consider; but dispose of the case upon other grounds. The commerce clause (Article I, § 8, cl. 3) confers on Congress power to regulate interstate and foreign commerce, and therefore such power is impliedly forbidden to the States. "Even their power to lay and collect taxes, comprehensive and necessary as that power is, cannot be exerted in a way which involves a discrimination against such commerce." *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 596, and cases cited; *Kansas City, &c. Ry. Co.* v. *Kansas*, 240 U. S. 227, 231; *Brimmer* v. *Rebman*, 138 U. S. 78, 82; *Elmer* v. *Wallace*, 275 Fed. 86, 90; *State* v. *Ferrandou*, 130 La. 1035, 1041. A State may not enforce any law, the necessary effect of which is to prevent, obstruct or burden interstate commerce. *Pennsylvania*

v. *West Virginia, supra*, 596, 597, and cases cited. The Supreme Court of Louisiana held that the act here in question is a police regulation and not a revenue act; that its object is to conserve and protect all furbearing animals and alligators within its borders, including their skins and hides; that the various subdivisions of the act relate to that object, and that payment of the tax is a condition precedent to the divestiture of the State's title and its transfer to the dealer paying the tax. The court said, in substance, that the tax is necessarily levied upon dealers, as they have established places of business, make inventories, and are easily accessible for the purpose of collection, and pointed out the difficulties in the way of levying the charge, at the time of the severing of the skins or hides, on itinerant trappers with no fixed place of abode or business.

This Court will determine for itself what is the necessary operation and effect of a state law challenged on the ground that it interferes with or burdens interstate commerce. The name, description or characterization given it by the legislature or the courts of the State will not necessarily control. Regard must be had to the substance of the measure rather than its form. *Looney* v. *Crane Co.*, 245 U. S. 178, 189, *et seq.*; *Kansas City, &c. Ry. Co.* v. *Kansas, supra*; *St. Louis Southwestern Ry. Co.* v. *Arkansas*, 235 U. S. 350, 362; *U. S. Express Co.* v. *Minnesota*, 223 U. S. 335, 346; *Galveston, Harrisburg & San Antonio Ry. Co.* v. *Texas*, 210 U. S. 217, 227. Our examination of this act discloses no reason why the decision of the state court should be disturbed. The legislation is a valid exertion of the police power of the State to conserve and protect wild life for the common benefit. It is within the power of the State to impose the exaction as a condition precedent to the divestiture of its title and to the acquisition of private ownership. Expressly, the tax is imposed upon all skins and hides taken within the

State. This includes those, if any, sold for manufacture in the State as well as those shipped out. In their argument here, plaintiffs in error stated that skins and hides are not manufactured into finished products in Louisiana, and that all are shipped out of the State. But that is no objection to the tax. The State's power to tax property is not destroyed by the fact that it is intended for and will move in interstate commerce. Such skins and hides may be taxed while in the hands of dealers before they move in interstate commerce. *Coe* v. *Errol*, 116 U. S. 517, 525; *Bacon* v. *Illinois*, 227 U. S. 504, 515–516; *Arkadelphia Co.* v. *St. Louis Southwestern Ry. Co.*, 249 U. S. 134, 151. Failure to levy and enforce the tax before the skins and hides reach the dealers does not make the necessary operation and effect of the law an interference with interstate commerce. The imposition of the tax on the skins and hides while in the hands of the dealers is calculated to make certain that all will be found for taxation. No interference with interstate commerce results from the enforcement of the act. It is not repugnant to the commerce clause of the Constitution.

Plaintiffs in error contend that the act violates the due process and equal protection clauses of the Fourteenth Amendment. They argue that legislative authority is improperly delegated to, and that arbitrary power is conferred upon, the Department of Conservation, and that the severance tax is bad because imposed on such dealers in addition to property and license taxes that are imposed on merchants generally.

These contentions are without merit. The act provides " that there be and is hereby levied a severance tax of two (2c) cents on the dollar on and of the value of all skins or hides taken from any wild furbearing animals or alligators within this State, which severance tax shall be paid by the dealer . . . under such rules and regulations as shall be determined by the Department of Con-

servation. . . ." That department is authorized to ascertain purchase prices of skins and hides paid by the dealer, to determine the time when and the manner in which the tax shall be paid, and to adopt and enforce rules and regulations not contrary to the act in relation to the collection of the tax. It is not shown that defendant in error has made, or proposes to apply, any unreasonable, capricious or arbitrary rules, regulations or methods of valuation for the purpose of arriving at the amount of the tax or for enforcing its payment. The Fourteenth Amendment does not require equality of taxation within the State or prevent the laying of special or additional taxes upon defined classes of property, so long as the inequality is not based upon arbitrary distinctions. It does not prohibit state legislation imposing a severance tax upon such skins and hides, even if no similar or corresponding tax is levied upon other property of merchants. *St. Louis Southwestern Ry. Co.* v. *Arkansas, supra,* 367, and cases cited. *Singer Sewing Machine Co.* v. *Brickell,* 233 U. S. 304, 315; *Southwestern Oil Co.* v. *Texas,* 217 U. S. 114, 121; *Cook* v. *Marshall County,* 196 U. S. 261, 274. Wild animals permitted by the State to be taken and reduced to possession on prescribed conditions may reasonably be distinguished from other classes of property. Compare *Geer* v. *Connecticut, supra; Ohio Oil Co.* v. *Indiana* (No. 1), 177 U. S. 190, 208. The Fourteenth Amendment does not interfere with the proper exercise of the police power. *Barbier* v. *Connolly,* 113 U. S. 27, 31; *Mugler* v. *Kansas,* 123 U. S. 623, 663; *Powell* v. *Pennsylvania,* 127 U. S. 678, 683; *In re Rahrer,* 140 U. S. 545, 555; *Reinman* v. *Little Rock,* 237 U. S. 171, 177. Protection of the wild life of the State is peculiarly within the police power, and the State has great latitude in determining what means are appropriate for its protection.

The act is not repugnant to the due process or equal protection clauses of the Fourteenth Amendment.

Judgment affirmed.